State of Iowa.
Office of Superintendent
Public Instruction,
Des Moines.

November 27, 1900.

J. D. Layman,

Berkeley, California.

Dear Sir: We take pleasure in sending you a copy of our latest school laws and several copies of the reports of this department for the library of the university with which you are connected.

Yours respectfully,

R. C. Barrett

Sup't Public Instruction,

A. C. Ross Deputy.

Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers and moneys pertaining or belonging to the office, taking a receipt therefor.—CODE, SECTION 2770.

AMENDMENTS

TO THE

School Laws of 1897,

As Enacted by the Twenty-Eighth General Assembly.

1900

PUBLISHED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, IN CONFORMITY WITH SECTION 2624, FOR DISTRIBUTION TO SCHOOL OFFICERS AND BOARDS OF DIRECTORS.

DES MOINES:
F. R. CONAWAY, STATE PRINTER.
1900.

DISTRIBUTION OF LAWS.

Volumes bound in paper covers shall be furnished to each school director, to be turned over by the director to his successor in office. See code, section 2624.

Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers and moneys pertaining or belonging to the office, taking a receipt therefor. See code, section 2770.

PREFACE.

Chapter 23. School corporations may accept gifts and bequests.
Chapter 41. Amount of indebtedness that may be incurred.
Chapter 94. Duties and expenses of the state superintendent.
Chapter 96. Provides for granting special state certificates.
Chapter 104. Authorizes special meetings of the electors.
Chapter 105. Board may determine number of precincts.
Chapter 106. Secretary calls special election to fill vacancies.
Chapter 107. Board may authorize subdirectors to employ teachers.
Chapter 108. Contingent fund levied for transportation of pupils.
Chapter 109. Vocal music shall be taught in all public schools.
Chapter 110. Apportionment fund used for library purposes.
Chapter 111. Petition for county uniformity of text-books.
Chapter 112. County superintendent has charge of text-books.
Chapter 142. Bond money may be used to purchase sites.

SESSION LAWS.

CHAPTER 23.

ENABLING SCHOOL CORPORATIONS TO ACCEPT GIFTS AND BEQUESTS.

H. F. 3.

AN ACT to amend section seven hundred and forty (740) of the code, enabling school corporations to accept gifts and bequests.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Power to accept bequests—how administered.** That section seven hundred and forty (740) of the code be and the same is hereby amended by striking out of the second line thereof the words, "other municipalities," and inserting in lieu thereof the words, "school corporations;" and by inserting after the word "bequest" in the third line of said section seven hundred and forty (740) the following words: "And to administer the same through their proper officers in pursuance of the terms of the gift or bequest."

SEC. 2. **In effect.** This act, being deemed of immediate importance, shall take effect from and after its publication in the Iowa State Register and the Des Moines Leader, newspapers published at Des Moines, Iowa.

Approved February 27, 1900.

I hereby certify that the foregoing act was published in the Iowa State Register and the Des Moines Leader, March 1, 1900.

G. L. DOBSON,
Secretary of State.

CHAPTER 41.

INDEBTEDNESS OF COUNTIES AND OTHER POLITICAL AND MUNICIPAL CORPORATIONS.

S. F. 39.

AN ACT to repeal section thirteen hundred and six (1306) of the code, and to enact a substitute therefor, relating to the assessment of taxes, and limiting the indebtedness of counties, and other political and municipal corporations, including cities acting under special charter.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Repealed.** That section thirteen hundred and six (1306) of the code be and is hereby repealed, and the following enacted in lieu thereof:

SEC. 2. **Amount of indebtedness limited.** "No county or other political or municipal corporation, including cities acting under special charters, shall be allowed to become indebted, in any manner or for any purpose, to an amount in the aggregate exceeding one and one-fourth per centum on the actual value of the property within such county or corporation, to be ascertained by the last state and county tax list previous to the incurring of such indebtedness."

SEC. 3. **In effect.** This act, being deemed of immediate importance, shall be in force from and after its publication in the Des Moines Register and the Des [Moines] Leader, newspapers published at Des Moines, Iowa.

Approved April 6, 1900.

I hereby certify that the foregoing act was published in the Iowa State Register and the Des Moines Leader April 7, 1900.

G. L. DOBSON,
Secretary of State.

CHAPTER 94.

DUTIES AND EXPENSES OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

S. F. 178.

AN ACT to amend sections twenty-six hundred and twenty-two (2622) and twenty-six hundred and twenty-seven (2627) of the code, relative to the duties and expenses of the superintendent of public instruction.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Additional duties and powers.** That section twenty-six hundred and twenty-two (2622) of the code be and is hereby amended by adding thereto the following:

"He shall have power to collect, publish and distribute statistical and other information relative to public schools and education in general; to visit teachers' association meetings and make tours of inspection among the common schools and other institutions of learning in the state, and may deliver addresses upon subjects relative to education; to prepare, publish, and distribute blank forms for all returns he may deem necessary, or that may be required by law, of teachers, or school officers; to publish and distribute annually leaflets and

circulars relative to arbor day, memorial day, and other days considered by him worthy of special observance in public schools; to prepare questions for the use of county superintendents in the examination of applicants for teachers' certificates; and to prepare, publish, and distribute, among teachers and school officers, courses of study for use in the rural and high schools of the state. When any county superintendent fails to make any report as required of him by law the superintendent of public instruction may appoint some suitable person to perform such duties and fix reasonable compensation therefor, which shall be paid by the delinquent county superintendent."

SEC. 2. **Allowance for expenses increased.** That section twenty-six hundred and twenty-seven (2627) of the code be and is hereby amended by striking out of line five thereof the words "two hundred fifty" and inserting the words "three hundred" in lieu thereof.

Approved April 4, 1900.

CHAPTER 96.

RELATING TO THE GRANTING OF TEACHERS' CERTIFICATES.

S. F. 135-193.

AN ACT to repeal section twenty-six hundred and thirty (2630) of the code and to enact a substitute therefor, relating to granting teachers' certificates by the educational board of examiners.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Repealed.** Section twenty-six hundred and thirty (2630) of the code is hereby repealed, and the following enacted in lieu thereof:

SEC. 2. **Special certificates.** The educational board of examiners may issue a special certificate to any teacher of music, drawing, penmanship, or other special branches, or to any primary teacher, of sufficient experience, who shall pass such examination as the board may require in the branches, and methods pertaining thereto, for which the certificate is sought. Such certificates shall be designated by the name of the branch, and shall not be valid for any other department or branch. The board shall keep a complete register of all persons to whom certificates or diplomas are issued.

Approved April 4, 1900.

CHAPTER 104.

SPECIAL MEETINGS OF VOTERS OF SCHOOL CORPORATIONS.
S. F. 310.

AN ACT to amend section twenty-seven hundred and fifty (2750) of the code, relating to special meetings of voters of school corporations.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Special meetings.** That section twenty-seven hundred and fifty (2750) of the code be and the same is hereby amended by striking out of the third and fourth lines thereof the words, "Whenever the corporation has lost the use of a schoolhouse by fire or otherwise."

SEC. 2. **In effect.** This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the Des Moines Leader, newspapers published in Des Moines, Iowa.

Approved April 4, 1900.

I hereby certify that the foregoing act was published in the Iowa State Register and the Des Moines Leader April 5, 1900.

G. L. DOBSON,
Secretary of State.

CHAPTER 105.

NUMBER OF ELECTION PRECINCTS OF SCHOOL CORPORATIONS.
S. F. 109.

AN ACT to amend section two thousand seven hundred and fifty-five (2755) of the code, relating to the number of election precincts into which school corporations of more than five thousand (5000) inhabitants may be divided.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Board to determine number.** That section two thousand, seven hundred and fifty-five (2755) of the code be and the same is hereby amended by striking out the words "not more than five precincts" in the third line of said section, and inserting in lieu thereof "such number of precincts as the board of directors shall determine."

SEC. 2. **In effect.** This act, being deemed of immediate importance, shall be in force and effect on and after its publication in the Iowa State Register and the Des Moines Leader, newspapers published at Des Moines, Iowa.

Approved February 9, 1900.

I hereby certify that the foregoing act was published in the Iowa State Register and Des Moines Leader February 10, 1900.

G. L. DOBSON,
Secretary of State.

CHAPTER 106.

SPECIAL ELECTION TO FILL VACANCIES ON SCHOOL BOARDS.

H. F. 204.

AN ACT [to amend section twenty-seven hundred seventy-one (2771) of the code], relating to the calling of a special election to fill vacancies on boards of school directors.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Secretary to call special election.** That section twenty-seven hundred seventy-one (2771) of the code be and the same is hereby amended by adding thereto the following:

"When the board is reduced below a quorum, by resignation or otherwise, the secretary of the board shall call a special election to fill the vacancies, giving notice in the same manner as for the annual meeting on the second Monday in March."

Approved April 7, 1900.

CHAPTER 107.

RELATING TO THE EMPLOYMENT OF TEACHERS.

H. F. 105.

AN ACT to amend section twenty-seven hundred and seventy-eight (2778) of the code, relative to the employment of teachers.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Employment of teachers in sub-districts.** That section twenty-seven hundred and seventy-eight (2778) of the code is amended by inserting after the word "law" in the fifth line the following: "But the board may authorize any sub-director to employ teachers for the schools in his sub-district."

Approved April 16, 1900.

CHAPTER 108.

RELATING TO CONTINGENT FUND OF SCHOOL CORPORATIONS.

S. F. 183.

AN ACT to amend section two thousand eight hundred and six (2806) of the code, in relation to the contingent fund.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Transportation fund.** That section twenty-eight hundred and six (2806) of the code is amended by inserting between the word "thereof" and the semicolon in the seventh line, the words, "and such additional sum as may be necessary not exceeding five dollars for each person of school age for transporting children to and from school."

Approved April 7, 1900.

CHAPTER 109.

THE TEACHING OF THE ELEMENTS OF VOCAL MUSIC IN THE PUBLIC SCHOOLS.

H. F. 68.

AN ACT to provide for the teaching of the elements of vocal music in all the public schools of Iowa. [Amendatory of chapter 14, title XIII, of the code, relating to the system of common schools.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Instruction in vocal music authorized.** That the elements of vocal music, including when practical the singing of simple music by note, be taught in all of the public schools of Iowa, and that all teachers teaching in schools where such instruction is not given by special teachers be required to satisfy the county superintendent of their ability to teach the elements of vocal music in a proper manner. Provided, however, that no teacher shall be refused a certificate or the grade of his or her certificate lowered on account of lack of ability to sing.

SEC. 2. **Normal institute.** That it shall be the duty of each county superintendent to have taught annually in the normal institute the elements of vocal music.

SEC. 3. **In effect.** This act shall take effect on the fourth day of July of the year nineteen hundred and one.

Approved April 19, 1900.

CHAPTER 110.

LIBRARIES FOR THE USE OF TEACHERS, PUPILS AND OTHER RESIDENTS IN SCHOOL DISTRICTS.

S. F. 240.

AN ACT to establish libraries for the use of teachers, pupils, and other residents in all school districts. [Amendatory of chapter 14, title XIII, of the code, relating to the systems of common schools.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Library fund.** The treasurer of each school township and each rural independent district in this state shall withhold annually, from the money received from the apportionment for the several school districts, not less than five nor more than fifteen cents, as may be ordered by the board, for each person of school age residing in each school corporation, as shown by the annual report of the secretary, for the purchase of books as hereinafter provided. When so ordered by the board of directors, the provisions of this section shall apply to any independent district.

SEC. 2. **Purchase of books—distribution.** Between the third Monday of September and the first day of December in each year the president and secretary of the board, with the assistance of the county superintendent of schools, shall expend all money withheld by the treasurer as provided in section one of this act, in the purchase of books selected from the lists prepared by the state board of educational examiners as hereinafter provided, for the use of the school district; in school townships the secretary shall distribute the books thus selected to the librarians among the several sub-districts, and at least semi-annually collect the same and distribute others.

SEC. 3. **State board of educational examiners to prepare lists of books.** It is hereby made the duty of the state board of educational examiners to prepare annually or biennially lists of books suitable for use in school district libraries, and furnish copies of such lists to each president, secretary, and each county superintendent, as often as the same shall be published or revised, from which lists the several presidents and secretaries and county superintendents shall select and purchase books.

SEC. 4. **Record book.** It shall be the duty of each secretary to keep in a record book, furnished by the board of directors, a complete record of the books purchased and distributed by him.

SEC. 5. **Librarian.** Unless the board of directors shall elect some other person, the secretary in independent districts and director in sub-districts in school townships shall act as librarian and shall receive and have the care and custody of the books, and shall loan them to teachers, pupils, and other residents of the district, in accordance with the rules and regulations prescribed by the state board of educational examiners and board of directors. Each librarian shall keep a complete record of the books in a record book furnished by the board of directors. During the periods that the school is in session the library shall be placed in the schoolhouse, and the teacher shall be responsible to the district for its proper care and protection. The board of directors shall have supervision of all books and shall make an equitable distribution thereof among the schools of the corporation.

Approved March 29, 1900.

CHAPTER 111.

COUNTY UNIFORMITY OF TEXT-BOOKS.

S. F. 116.

AN ACT to amend section twenty-eight hundred and thirty-one (2831) of the code, relating to county uniformity of text-books.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Petitions.** That section twenty-eight hundred and thirty-one (2831) of the code be amended as follows: Strike out the word "one-half" in line three and insert the word "one-third" in lieu thereof.

Approved March 29, 1900.

CHAPTER 112.

RELATING TO THE DISTRIBUTION OF TEXT-BOOKS.

H. F. 113.

AN ACT to amend section twenty-eight hundred and thirty-two (2832) of the code, in relation to the distribution of text-books in counties adopting a uniform series.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **County superintendent to distribute—itemized accounts.** That section twenty-eight hundred and thirty-two (2832) of the code be and the same is hereby amended by adding thereto the following:

"Unless otherwise ordered by the board of education, the county superintendent shall have charge of such text-books and of the distribution thereof among the depositories selected by the board; he shall render to the board at each meeting thereof itemized accounts of his doings, and shall be liable on his official bond therefor."

Approved March 14, 1900.

CHAPTER 142.

ISSUANCE OF BONDS BY SCHOOL CORPORATIONS.

S. F. 271.

AN ACT to amend section one (1) of chapter ninety-five (95) of the acts of the Twenty-seventh General Assembly, in relation to the issuance of bonds by school corporations.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Purchase of schoolhouse sites.** That section one (1) of chapter ninety-five (95) of the acts of the Twenty-seventh General Assembly be amended by inserting after the word "schoolhouses" in the tenth line thereof the following words: "And the purchase of sites therefor."

SEC. 2. **In effect.** This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the Des Moines Leader, newspapers published in Des Moines, Iowa.

Approved April 6, 1900.

I hereby certify that the foregoing act was published in the Iowa State Register and the Des Moines Leader, April 10, 1900.

G. L. DOBSON,
Secretary of State.

PREFACE.

The sections of the school law in this volume are reprinted from the code in as nearly the same form as possible. They are supposed to contain all the enactments now in force referring directly to school matters.

The annotations are intended to assist in understanding the meaning of the law. But it must not be presumed that these notes have in any proper sense the full force of law, except when they are based upon decisions of the courts or opinions from the attorney-general. In order to save room it seemed not always desirable to indicate such reference.

The Iowa reports may be consulted at the courthouse in each county seat. The index to the school laws and the index to the appeal cases should prove helpful for reference.

In practical operation and effect the new statutes should be considered rather as a continuance and modification of old laws, than as the entire abrogation of the old, and the reënactment of a new law. In many provisions, the new law is almost a counterpart of the former law. However, there are several material changes. The omission of some particulars is significant as indicating the intent of the general assembly. Where the wording or spirit of the former law is changed, it is apparent that the new meaning will prevail.

The following are a few of the important and valuable new provisions: The educational board of examiners will have power to grant a state certificate or a state diploma to a person holding a diploma from a state normal school or a certificate of as high grade from another state. The board of examiners will also have power to issue a state certificate for primary teachers. The law requires that a county superintendent must hold a first class certificate, a state certificate, or a state diploma. County certificates will be separated into classes or grades under the discretion of county superintendents, as formerly. A provision is made for certificates for two years. At all meetings of the voters voting will be by ballot. The probability of deadlocks is lessened by an odd number in many boards. In all independent districts except rural independent school districts the treasurer will be chosen by the electors. Districts having 5,000 or more inhabitants may be divided into precincts for voting purposes. In all districts, contracts with teachers may be made only by the entire board. A majority vote of the board will expel from school. Contingent fund to the amount of $25 annually for

each school room may be used to purchase dictionaries, library books, charts, and apparatus. Boards may contract for the transportation of children to and from school. The board has control of schoolhouses, subject to direction from the voters. Attendance in school townships is not governed necessarily by subdistrict lines, but the board determines the school that children shall attend. The course of study in graded or union schools must be approved by the superintendent of public instruction. The provisions for changes in boundaries and the restoration of territory are much simplified. In hearing appeals, witnesses may be subpœnaed, and provision is made by which the expenses will be paid. The costs must be entered up against those taking the appeal, if brought without reasonable cause, or if the appeal is not sustained.

The necessary haste in which the work was completed, as but little could be done by us until the code was in print, renders this compilation less complete than we would like. But it is hoped the volume will be found very helpful to the many officers so successfully administering the school affairs of this state.

October 1, 1897. HENRY SABIN,
Superintendent of Public Instruction.

AMENDMENTS

TO THE

School Laws of 1897,

As Enacted by the Twenty-seventh General Assembly.

PUBLISHED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION, IN CONFORMITY WITH SECTION 2624, FOR DISTRIBUTION TO SCHOOL OFFICERS AND BOARDS OF DIRECTORS.

DES MOINES:
F. R. CONAWAY, STATE PRINTER.
1898.

IF THIS EDGE IS THOROUGHLY MOISTENED WITH MUCILAGE OR GOOD PASTE, THESE AMENDMENTS MAY BE INSERTED IN THE VOLUME OF LAWS FOR 1897, AFTER PAGE 4.

Volumes bound in paper covers shall be furnished to each school director, to be turned over by the director to his successor in office. —Section 2624 Code.

Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers and moneys pertaining or belonging to the office, taking a receipt therefor.—Section 2770 Code.

PREFACE.

To aid those interested in the proper administration of school government and school laws, these amendments to the code of 1897, enacted by the Twenty-seventh General Assembly, are published.

Chapter 73 authorizes the state board of educational examiners to employ a secretary and expend annually a sum not to exceed $1,500. It is believed that this change in the law will enable the board to accommodate the teachers of the state by holding more examinations than formerly.

Chapter 77 provides for an increased appropriation for the State Normal School at Cedar Falls, Iowa.

Chapter 84 provides for the establishment of county high schools and also for the disestablishment of such schools if so ordered by a majority of the voters of the county.

Chapter 85 requires that the county superintendent shall hereafter be the holder of certificate issued for a period of two years.

Chapter 86 requires all applicants for teachers' certificates to be examined in didactics.

Chapter 87 provides that the institute fund shall be paid out by the county treasurer on warrants drawn by the county auditor on written order of the county superintendent, accompanied by the bill for services signed and sworn to by the person to whom due and verified by the county superintendent. The fund may not be overdrawn.

Chapter 88 makes it the duty of school boards in districts where school sites adjoin improved lands, to maintain a lawful fence.

Chapter 89 is an important amendment. It provides that when the boundary line between a school township and an independent city or town district is not the line between civil townships it may be changed by the concurrence of the boards of directors. The whole amendment should be read with care.

Chapter 90 provides for the sale of school laws by county auditors.

Chapter 91 relates to the names of school corporations and the election of directors therein. This amendment became effective by publication.

Chapter 92 provides that where there is an even number of subdistricts a director shall be elected at large by the voters of the school township.

Chapter 93 amends the code by providing that in school districts composed in whole or in part of cities or incorporated towns, the treasurer shall be elected for two years. This amendment became effective by publication.

Chapter 94 simplifies the provisions of section 2808 of the code. Hereafter the auditor will notify the county treasurer of the apportionment due each school corporation instead of the president of the board of each corporation.

Chapter 95 gives to boards of directors of school corporations the right to issue bonds to pay any judgment or any indebtedness under bonds lawfully issued. Boards are also authorized to issue school building bonds for the purpose of erecting, completing or improving schoolhouses when authorized by the voters.

When not otherwise noted, these amendments go into effect on the fourth of July, 1898.

RICHARD C. BARRETT,
Superintendent Public Instruction.

Des Moines, July 1, 1898.

SESSION LAWS.

CHAPTER 73.

S. F. 145.

AN ACT to repeal section twenty-six hundred and thirty-four (2634) of the code, and to enact a substitute therefor, relating to the State Board of Educational Examine[r]s, and authorizing it to employ a secretary.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Compensation—secretary—salary.** That section twenty-six hundred and thirty-four of the code be, and the same is hereby repealed, and the following enacted in lieu thereof:

"Each member of the board, and person appointed to assist in conducting examinations, shall receive for the time actually employed in such service his actual necessary expenses, and those not salaried officers shall be paid in addition three dollars a day. The board shall have power to employ a secretary and prescribe his duties. He shall receive a salary of not exceeding $75 a month and actual necessary expenses while engaged in the performance of his duties at places other than his residence. All expenditures authorized by this section shall be certified by the superintendent of public instruction to the auditor of state, who shall draw warrants therefor upon the treasurer, but not to exceed the fees paid into the treasury by the board. The aggregate amount to be paid in any one year by the board for all purposes shall not exceed $1,500."

Approved April 7, 1898.

CHAPTER 77.

H. F. 105.

AN ACT amending section twenty-six hundred and eighty-two [2682] of the code, relating to annual appropriations for the Normal School at Cedar Falls, Iowa.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Teachers' and contingent fund.** That section twenty-six hundred and eighty-two of the code be and the same is hereby amended by striking out the words "seventeen thousand five hundred," in the second line of said section, and inserting in lieu thereof the words "twenty-eight thousand five hundred," and by striking out the words "three thousand" in the fourth line of said section, and inserting in lieu thereof the words "nine thousand."

Approved April 12, 1898.

CHAPTER 84.

H. F. 139.

AN ACT to amend sections twenty-seven hundred and twenty-eight (2728), twenty-seven hundred and thirty (2730), twenty-seven hundred and thirty-one (2731), and twenty seven hundred and thirty-two (2732), and repeal section twenty-seven hundred and thirty-three (2733) of the code, and enact a substitute therefor, in relation to county high schools.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **How established.** That section twenty seven hundred and twenty-eight (2728) of the code be amended by inserting after the word "question," in the sixth line thereof, the words, "Together with the amount of tax to be levied to erect the necessary buildings." Also, by inserting in said section, after the word "school" in the eleventh line thereof, the words, "And for or against the levying of the tax." Also by inserting in said section, after the word "school," in the thirteenth line thereof, the words, "And the levying of such tax."

SEC. 2. **Approval of electors.** That section twenty-seven hundred and thirty (2730) of the code be amended by striking out all that part of the same after the word "county," in the fifth line thereof, and up to and including the word "only," in the twelfth line thereof, and inserting the following, in lieu thereof: "And shall procure plans and specifications for the erection of such buildings, and make all necessary contracts for the erection of the same, the cost of which, when completed, shall not exceed the amount of the tax so levied therefor. They shall also annually make and certify to the board of supervisors on or before the first Monday of September of each year, an estimate of the amount of funds needed for improvements, teachers' wages and contingent expenses for the ensuing year, designating the amount for each, which, in the aggregate shall not exceed, in any one year, two mills on the dollar, upon the taxable property of the county. No expenditures for buildings or other improvements shall be made, or contract entered into therefor, by said board, involving an outlay of to exceed five hundred dollars in any one year, without the same first being submitted to the electors of the county in which said school be located, for their approval."

SEC. 3. **Management.** That section twenty-seven hundred and thirty-one (2731) of the code be amended by striking out all that part of said section up to, and including the word "but," in the fifth line thereof, and inserting the words, "said board," in lieu thereof.

SEC. 4. **Apportionment—tuition.** That section twenty-seven hundred and thirty-two (2732) of said code be amended by adding thereto, at the end of said section the following:

> "Said board of trustees shall make all necessary rules and regulations in regard to the age and grade of attainments necessary to entitle pupils to admission into the school, and shall, on or before the 10th day of July of each year make an apportionment between the different school corporations of the county, of the pupils that shall attend said school, and shall apportion to each of said school corporations its proportionate number, based upon the number of pupils that

can be reasonably accommodated in said school, and the number of pupils of school age, actual residents of such school corporations, as shown by the county superintendents' report last filed with the county auditor, of said county; said apportionment shall be published in the official papers of such county, to be paid for, as other county printing; pupils from the said school corporations to the number so designated in such apportionment, shall be entitled to admission into said school, tuition free, and none others, and it shall be unlawful to accredit pupils so attending to any other school corporation, than the one in which they are enumerated for school purposes. Should there be more applicants for such admission from any school corporation than its proportionate number, so determined, then the board of directors of such school corporation shall designate which of said applicants shall be entitled to so attend. If the school shall be capable of accommodating more pupils than those attending under such apportionment, others may be admitted by the board of trustees, preference at all times being given to pupils desiring such admission, who are residents of the county. The board of trustees shall fix reasonable tuition for such pupils. If such pupils are residents of the county the school corporation from which they attend shall pay their tuition out of its contingent fund. The principal of such high school shall report to the said board of trustees under oath, at the close of each term the names and number of pupils attending such school during said term, from what school corporation they attended, and the amount of tuition, if any, paid by each, the same to be included in the annual report of the secretary of the board of trustees to the board of supervisors, provided for in section twenty-seven hundred and thirty-one (2731) of the code. The tuition so paid to be turned over to the treasurer of the board of trustees to be used in paying the expense of said school under the direction of said board."

SEC. 5. **Petitions to abolish—election.** That section twenty-seven hundred and thirty-three of the code be repealed and the following substituted:

"Whenever citizens of any county having a county high school desire to abolish the same or to dispose of any part of the buildings or property thereof, they may petition the board of supervisors at any regular session thereof in relation thereto, and sections three hundred and ninety-seven (397), three hundred and ninety-eight (398), three hundred and ninety-nine (399) and four hundred (400) of the code shall apply to and govern the whole matter, including the manner of presenting and determining the sufficiency of such petitions and remonstrances thereto, so far as applicable. If an election is ordered the same shall be held at the time of the general election or at a special election called

for that purpose and the proposition shall be submitted and the election conducted in the manner provided in title six (6) of the code. If any proposition as herein provided be legally submitted and adopted, the board of supervisors is hereby empowered to carry the same into effect."

Approved April 12, 1898.

CHAPTER 85.

H. F. 112.

AN ACT to amend section twenty-seven hundred and thirty-four (2734) of the code, relating to the qualifications of county superintendents.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Two years' certificate.** That section twenty-seven hundred and thirty-four of the code be and is hereby amended by striking out of the second and third lines thereof the words: "first class or" and inserting in lieu thereof the words: "Two years certificate as provided for in section twenty-seven hundred and thirty-seven (2737) of the code issued by any county superintendent in the state, or a."

Approved April 12, 1893.

CHAPTER 86.

S. F. 181.

AN ACT to amend section twenty-seven hundred and thirty-six (2736) and twenty-seven hundred and thirty-seven (2737) (chapter [thirteen] 13 of title [XIII] 13) of the code, relating to county superintendents and the examination of applicants for teachers' certificates.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Didactics required.** That section twenty-seven hundred and thirty-six of the code be amended by the insertion of the word "didactics" after the words "United States" in the third line.

SEC. 2. **Same.** Amend section twenty-seven hundred and thirty-seven by striking out the word "didactics" after the word "branches" in the seventh line of said section.

Approved March 31, 1898.

CHAPTER 87.

H. F. 99.

AN ACT to amend section twenty-seven hundred and thirty-eight (2738) of the code, relative to the disbursement of the institute fund.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Disbursement of institute fund.** That section twenty-seven hundred and thirty-eight (2738) of the code be amended by striking out the last sentence thereof commencing with the words "all disbursements of the institute fund," and continuing to the close of said section and inserting in lieu thereof, "All disbursements of the institute fund shall be by warrants drawn by the county auditor, who shall draw said warrants upon the written order of the county superintendent, and said written order must be accompanied by an itemized bill for services rendered or expenses incurred in connection with the institute, which bill must be signed and

sworn to by the party in whose favor the order is made and must be verified by the county superintendent. All said orders and bills shall be kept on file in the auditor's office until the final settlement of the county superintendent with the board of supervisors at the close of his term of office. No warrant shall be drawn by the auditor in excess of the amount of institute fund then in the county treasury."

Approved April 12, 1898.

CHAPTER 88.

S. F. 120.

AN ACT to require boards of school directors to fence schoolhouse sites. [Amendatory to title XIII, chapter 14, of the code, relating to system of common schools.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Duty of boards of school directors.** It shall be the duty of all boards of school directors in school districts where the schoolhouse site adjoins the cultivated or improved lands of another to build and maintain a lawful fence between said site and cultivated or improved lands.

SEC. 2. **Rights of owner of adjoining lands.** The owner of lands adjoining any schoolhouse site shall have the right to connect the fence on his lands with the fences around any schoolhouse site, but he shall not be liable to contribute to the maintenance of the fence around said site.

Approved March 25, 1898.

CHAPTER 89.

S. F. 186.

AN ACT to empower boards of directors of school corporations to change boundary lines between such corporations in certain cases. [Amendatory of title XIII, chapter 14, of the code, pertaining to system of common schools.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Corporation limits changed.** When the boundary line between a school township and an independent city or town district is not also the line between civil townships, such boundary may be changed at any time by the concurrence of the boards of directors; but in no case shall a forty-acre tract of land, by the government survey, be divided; and such subdivisions shall be excluded or included as entire forties. The boundaries of the school township or the independent district may in the same manner be extended to the line between civil townships, even though by such change one of the districts shall be included within and consolidated with the other as a single district. When the corporate limits of any city or town are extended outside the existing independent district or districts, the boundaries of said independent district or districts shall be also correspondingly extended. But in no case shall the boundaries of an independent district be affected by the reduction of the corporate limits of a city or town.

Approved March 19, 1898.

CHAPTER 90.

H. F. 181.

AN ACT to provide for the sale and distribution of the school laws of Iowa. [Additional to title XIII, chapter 14, of the code, relating to the system of common schools.]

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **County auditors—requisition—duplicate receipts.** On or before the 15th day of November of each year, the auditor of each county shall make an estimate of the number of copies of the schools laws of Iowa as will, in his judgment, be required to supply the demand for such laws in his county, in addition to the number of copies of said school laws furnished by the state as provided for in section 2624, chapter 1, title 13 of the code. The county auditor shall transmit his estimate to the superintendent of public instruction, together with a requisition for the number of copies required. On receipt of the requisition the superintendent of public instruction shall forward to the county auditor the number of copies named in the requisition. On receipt of the copies transmitted to him, the county auditor shall execute receipts therefor in duplicate, one of which he shall immediately transmit to the superintendent of public instruction and the other to the state auditor.

SEC. 2. **Sale—price.** The county auditor shall keep for sale at his office in the court house of the county, copies of the school laws of the state of Iowa, which he shall receive in the manner hereinbefore provided, at a price not to exceed twenty (20) cents per copy of such laws, bound in paper and not to exceed 30 cents per copy of such laws bound in cloth and pay the proceeds of such sales into the county treasury on or before the 15th day of November of each year.

SEC. 3. **Statement of copies sold.** The said county auditor shall also on or before the 15th day of November of each year, make out in writing under oath, a statement of the number of copies sold by him and not before accounted for, and the number remaining on hand and the amount paid to the county treasurer, and transmit such statement to the auditor of state, who shall charge the county treasurer with such amount, and the superintendent of public instruction shall certify to the state auditor, the number of copies transmitted to each county auditor and the state auditor shall charge each county auditor therewith, and subsequently credit him with such as may be sold or otherwise lawfully disposed of.

SEC. 4. **Copies delivered to successor.** When the county auditor goes out of office, having any such copies remaining, he shall deliver them to his successor, taking his receipt therefor in duplicate, one of which shall be sent to the state auditor which shall be his sufficient discharge for the same.

Approved April 12, 1898.

CHAPTER 91.

[S. F. 172.]

AN ACT to amend sections twenty-seven hundred and forty-four (2744) and twenty-seven hundred and fifty-four (2754) of the code, relating to the names of school corporations and the election of directors therein.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Village included.** That section twenty-seven hundred and forty-four of the code be amended by striking out the words "or incorporated" in the fifth and sixth lines thereof and inserting after the word "town" in the sixth line the words "or village."

SEC. 2. **Membership of board.** That section twenty-seven hundred and fifty-four of the code be amended by striking out the words "or incorporated" in the seventh line thereof and inserting after the word "town" in said line the words "or village." Also by inserting after the word "districts" in said line the words "And in all rural independent districts where the board now consists of six members." Also by adding after the figures "1900" in the tenth line of said section the following: "In all independent city, town, or village districts where the board now consists of three members such board shall hereafter consist of five members, three of whom shall be elected on the second Monday in March, 1898, one for one year, one for two years, and one for three years." Also by inserting, before the word "rural" in the tenth line, the word "other." Also by striking out the word "incorporated" in the thirteenth and fourteenth lines.

SEC. 3. **In effect.** This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and Des Moines Leader, newspapers published in Des Moines, Iowa.

Approved February 18, 1898.

I hereby certify that the foregoing act was published in the Iowa State Register and the Des Moines Leader, February 19, 1898.

G. L. DOBSON,
Secretary of State.

CHAPTER 92.

S. F. 273.

AN ACT to amend section twenty-seven hundred and fifty-two (2752) of the code, relating to boards of directors of school townships.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Number of directors.** That section twenty-seven hundred and fifty-two of the code be and is hereby amended by striking out of line three thereof the words "are only two" and inserting the words "is an even number of" in lieu thereof. Also by striking out the words "a third" in the same line and inserting the word "another."

Approved April 9, 1898.

CHAPTER 93.

H. F. 101.

AN ACT to amend sec[tion] [twenty-seven hundred and fifty-four] 2754 of the code of Iowa, relating to the term of office of school treasurers, in districts composed in whole or in part of cities or incorporated towns.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Term of treasurer.** That sec. 2754 of chap. 14 of title 13 of the code of Iowa be amended as follows, to-wit: strike out the words "one year" in the 15th line and insert in lieu thereof, the words "two years."

SEC. 2. **In effect.** This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Iowa State Register and the Des Moines Leader, newspapers published at Des Moines, Iowa.

Approved February 17, 1898.

I hereby certify that the foregoing act was published in the Iowa State Register and the Des Moines Leader, February 18, 1898.

G. L. DOBSON,
Secretary of State.

CHAPTER 94.

H. F. 61.

AN ACT to amend section [twenty-eight hundred and eight] 2808 of the code, and to provide for the manner of distributing funds in the hands of the county treasurer belonging in common to all the schools in the county.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Apportionment.** That section twenty-eight hundred and eight (2808) of the code be amended by striking out all that part beginning with the word "he" in the ninth line thereof and adding in lieu thereof, the following: "He shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation. The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that he is author ized to pay other school moneys to the treasurers of the several school districts."

Approved February 9, 1898.

CHAPTER 95.

S. F. 280.

AN ACT to amend sections twenty-eight hundred and twelve (2812) and twenty-eight hundred and thirteen (2813) of the code, relating to the issuance of bonds by school corporations and the levy of taxes for the payment thereof

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. **Issuance of bonds.** That section twenty-eight hundred and twelve (2812) of the code be amended by striking out the first seven lines thereof, and the words "purpose which" in the eighth line and inserting in lieu thereof the following: "The board of directors of any school corporation may issue bonds in its name to pay any judgment against it or any indebtedness under bonds lawfully issued and redeemable by their terms which new bonds shall be duly authorized by resolution of the board and shall be known as school funding bonds. The board may also issue bonds to be known as school building bonds, for the purpose of providing funds for the erection, completion or improvement of schoolhouses, when authorized by the voters at the regular meeting or a special meeting called for that purpose. Each of such classes of."

SEC. 2. **Money borrowed excluded.** That section twenty-eight hundred and thirteen of the code be amended by striking therefrom the following: "Or in an independent city or town district or [of] any money borrowed for improvements after a vote thereof authorizing the same."

Approved April 7, 1898.

SCHOOL LAWS OF IOWA.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION **2621. Office—records—deputy.** The superintendent of public instruction shall have an office in the capitol, in which shall be filed and kept separately all papers, reports and documents transmitted to him each year by the several county superintendents, and open to inspection by the governor or a committee of either house of the general assembly whenever required. He shall keep a record of all matters and things done in his office, which, together with all other papers and documents, at the conclusion of his term, shall be turned over to his successor. He may appoint a deputy, who shall qualify in like manner as his principal, and who, in the absence or inability of the superintendent, shall perform his duties. [C.'73, §§ 766–7, 770, 1578; C.'51, §§ 416, 1078.]

SEC. **2622. Duties—teachers' conventions and institutes.** He shall be charged with the general supervision of all the county superintendents and the common schools of the state; may meet county superintendents in convention at such points in the state as may be most suitable for the purpose, at which proper steps may be taken looking toward securing a more uniform and efficient administration of the school laws. He shall appoint, upon the request of county superintendents, the time and place for holding teachers' institutes, such institutes to be called when it is probable that not less than twenty teachers will be present, and remain in session not less than six working days, of which time and place of meeting he shall give notice to the county superintendent of the proper county. He shall attend teachers' institutes thus called in the several counties of the state, so far as consistent with his official duties, and assist in their management and instruction. [C.'73, §§ 1577, 1584; C.'51, § 1080.]

SEC. **2623. Opinions—appeals.** He shall render opinions in writing upon request of any school officer regarding the school law, its administration, and the duty of such officer, and shall determine all cases brought before him on appeal from the decisions of the county superintendents. [C.'73, § 1577; C.'51, § 1080.]

SEC. **2624. Publication of school laws.** He shall every four years, if deemed necessary, cause to be printed and bound in cloth all school laws in force up to that time, with such notes, forms, rulings and decisions as may be of value in aid of school officers in the

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SECTION 2623. 1. It has been the custom for many years to answer all proper inquires, from whatever source, touching the construction and application of the school laws.

2. As all correspondence of value must be filed for preservation, it is obvious that a request to return a letter with the reply, cannot be complied with.

proper discharge of their duties, reference being made to previous laws amended or changed, so as to indicate the effect of such amendment or change; one copy of which shall be sent to each county superintendent, and one to each district and independent district in the state, to be distributed by the several county superintendents. Volumes bound in paper covers shall be furnished to each school director, to be distributed by the county superintendent, which shall be turned over by the director to his successor in office. Should he deem it unnecessary at any time to prepare a volume as above provided, the superintendent may cause to be published in pamphlet form such amendments to the school laws as have been passed by the general assembly, which shall be distributed in the manner and to the parties hereinbefore provided. He may subscribe for a sufficient number of copies of some educational school paper, printed and published in the state, to furnish one to each county superintendent; but no paper shall be selected which will not publish each decision made by him relating to the school law, and which he may regard of general importance; and the certificate of having thus subscribed shall be sufficient authority for the auditor of state to issue his warrant upon the state treasurer for the amount of the subscription. [22 G. A., ch. 59; 18 G. A., ch. 150, §§ 1, 2; C.'73, §§ 1579, 1581.]

SEC. **2625. Reports.** He shall on the first day of January report to the auditor of state the number of persons in each county between the ages of five and twenty-one years, and biennially to the governor; which report shall contain a statement of the condition of the common schools in the state, the number of school townships and districts therein, number of independent districts, number of teachers, number of schools, number of schoolhouses and value thereof, number of persons of school age, number of scholars in each county attending school the previous year, number of books in district libraries, the value of all apparatus in schools, and such other statistical information as may be of public importance, plans matured or adopted for the more perfect organization and efficiency of the common schools; and any suggestions he may deem important, regarding further legislation, which will strengthen the common schools of the state. [22 G. A., ch. 82, § 29; C.'73, §§ 1582–3; C.'51, § 1086.]

SEC. **2626. Appropriations for institutes.** To defray the expenses of county teachers' institutes, there is hereby appropriated out of any moneys in the state treasury not otherwise set apart a sum not to exceed fifty dollars annually for each institute held in each county, which sum the superintendent shall receive from the state treasurer, upon the warrant of the state auditor, to be issued to him upon his certificate; which amount, when drawn, shall be forthwith remitted to the proper county superintendent. If any balance remains of this sum after paying the expenses of the institute, it shall be covered into the county treasury of the proper county and credited to the institute fund. [C.'73, § 1584.]

SEC. **2627. Salary and expenses.** The salary of the superintendent of public instruction shall be twenty-two hundred dollars per annum, and that of his deputy fifteen hundred dollars, to be paid monthly upon the warrant of the state auditor, and, in addition thereto, the state superintendent shall receive two hundred and

SECTION 2625. The word districts in line six means subdistricts.

fifty dollars annually, or so much thereof as may be necessary, to pay actual traveling expenses incurred in the performance of official duties, to be allowed upon an itemized and verified account filed with the state auditor, who shall draw his warrant upon the state treasurer for the amount allowed. [22 G. A., ch. 109, § 1; 21 G. A., ch. 118, § 5; C.'73, § 3760.]

OF THE BOARD OF EDUCATIONAL EXAMINERS.

SECTION **2628. Members.** The educational board of examiners shall consist of the superintendent of public instruction, president of the university, principal of the normal school, and two persons to be appointed by the governor, one of whom shall be a woman, the appointees to hold office for a term of four years and be ineligible as his or her successor, the superintendent of public instruction to be by virtue of his office president of the board. [19 G. A., ch. 167, § 1.]

SEC. **2629. Meetings—examinations.** The board shall meet for the transaction of business at such times and places as the president may direct, and shall annually hold at least two public examinations of teachers, at which one member of the board shall preside, assisted by not more than two qualified teachers to be selected by it. All examinations shall be conducted in accordance with rules and regulations adopted by the board, not inconsistent with the laws of the state, and a record shall be kept of all of its proceedings. It may issue state certificates and state diplomas to such teachers as are found upon examination to possess a good moral character, thorough scholarship and knowledge of didactics, with successful experience in teaching. The examination for certificates and diplomas shall cover orthography, reading, writing, arithmetic, geography, English grammar, bookkeeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of the state, and didactics; those for diplomas, in addition to the foregoing, geometry, trigonometry, chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature, general history, and such other studies as the board may require. [Same, §§ 2–4.]

SEC. **2630. Certificates and diplomas.** It may also issue such certificates to graduates of any state normal school in the state possessed of like qualifications, upon proof of thirty-six weeks' successful experience in teaching, and a diploma when five years' such experience is shown. It may also, at discretion, issue a certificate or a diploma to any one holding a diploma issued by a state normal school, or a certificate issued by a state superintendent or a state board of education, of any other state, when the same is in all respects of as high a grade as the corresponding certificate or diploma issued in Iowa, upon proof of experience as herein provided. It may also issue a certificate to any primary school teacher in the state of sufficient experience, and who shall pass such examination as the board may designate in branches and methods which pertain especially to that kind of work. Such certificate shall be known as a primary teacher's certificate, and shall not be valid as a

teacher's certificate for any other department. It shall keep a complete register of all persons to whom certificates or diplomas are issued. [23 G. A., ch. 22.]

SEC. **2631. How long valid—revocation—fees.** A state certificate shall authorize the holder to teach in any public school in the state for five years thereafter, and a diploma shall confer such authority for life; but any certificate or diploma may be revoked by the board for sufficient cause, or such cause as would, if known at the time, have prevented issuance thereof, provided the holder of such certificate or diploma shall have due notice, and shall be allowed to be present and make his defense. For each certificate issued the applicant shall pay three dollars, and for each diploma five dollars, which may be required before the examination is commenced. If the applicant fails in the examination, and the fees have been advanced, one-half of the sum shall be returned; all moneys obtained from this source to be paid into the state treasury. [19 G. A., ch. 167, §§ 5, 6.]

SEC. **2632. Registration.** Each holder of a state certificate or diploma shall register the same with the county superintendent of the county in which he or she is to teach, before entering upon the work, and the county superintendent, in his annual report to the superintendent of public instruction, shall include therein an account thereof. [Same, § 7.]

SEC. **2633. Account of moneys.** The board shall keep an accurate and detailed account of all money received and expended, which with a list of those receiving certificates or diplomas, shall be published by the superintendent of public instruction in his annual report. [Same, § 9.]

SEC. **2634. Compensation.** Each member of the board, and person appointed to assist in conducting examinations, shall receive for the time actually employed in such service his necessary expenses, and those not salaried officers shall be paid in addition three dollars a day, the amount to be certified by the superintendent of public instruction to the state auditor, who shall draw his warrant upon the state treasurer therefor; but the aggregate amount to be paid in any one year shal not exceed six hundred dollars. [25 G. A., ch. 36; 19 G. A., ch. 167, § 8.]

SECTION 2631. The fact that a teacher holds a first class county certificate, a state certificate, or a state diploma, does not in any way exempt him from the same obligations imposed by the law upon other teachers. It is the duty of all teachers to attend the county normal institute and to support the county superintendent in all measures calculated to improve the schools and to advance the interests of education in the county.

SECTION 2632. 1. The law requires every holder of a state diploma or state certificate to have the same registered in the office of the county superintendent, before commencing to teach in such county. No fee is required. The superintendent should insist on seeing some official statement of the board of examiners, and should make his record from such inspection.

2. Holders of state certificates or diplomas are not exempt from reporting to the county superintendent, or complying in every respect with requirements made of other teachers, except as to examination for certificates.

OF THE NORMAL SCHOOL.

SECTION **2675. Board of trustees—officers.** The normal school at Cedar Falls, for the special instruction and training of teachers for the common schools, shall be under the management and control of a board of trustees, of which the superintendent of public instruction shall be, by virtue of office, a member and president. It shall meet annually on or before June fifteenth, at the call of the president, and organize by the election of one of its members vice-president, and a secretary and treasurer, neither of the latter to be a member of the board. The treasurer shall give bond in the sum of twenty thousand dollars, with good and sufficient sureties, to be filed with and approved by the secretary of state, which bond shall be conditioned for the safe keeping and proper disbursement of all money coming into his hands by virtue of his office. [16 G. A., ch. 129, §§ 1, 4.]

SEC. **2676. Powers of board—admissions—fees.** The board shall have power to employ a sufficient number of suitable and competent teachers and other assistants; fix their compensation; make all necessary rules and regulations for the management of the school, the admission of pupils from the several counties in the state, giving to each county its proper representation therein in proportion to the population thereof, and to all teachers in the state equal rights, requiring that each one received as a pupil shall furnish satisfactory evidence of good moral character and the honest intention of following the business of teaching school in the state; and make such arrangements as it may for the lodging and boarding of pupils, which shall be paid for by them. It may charge a fee for contingent expenses not to exceed one dollar monthly, and a tuition fee of not more than six dollars a term, if necessary for the proper support of the institution, and shall determine what part of the year the school shall be open, its sessions to continue, however, for at least twenty-six weeks of each year. [17 G. A., ch. 142, § 2; 16 G. A., ch. 129, § 5.]

SEC. **2677. Branches of study.** Physiology and hygiene shall be included in the branches of study regularly taught to and studied by all pupils in the school, and special reference shall be made to the effect of alcoholic drinks, stimulants and narcotics upon the human system, and the board of trustees shall provide the means for the enforcement of the provisions of this section and see that they are obeyed. [21 G. A., ch. 1, § 1.]

SEC. **2678. Contract with school districts.** The board of trustees may contract with the board of directors of the school township or independent district in which the school is situated, and those contiguous thereto, for a period not exceeding two years at a time, to receive the pupils thereof into the normal school and furnish them with instruction, payment therefor to be made out of the teachers' fund of such townships or districts, which shall not exceed fifty cents, weekly, for each pupil; the contract to be in writing, and a copy filed with the county superintendent. [25 G. A., ch. 40, §§ 1–3.]

SEC. **2679. Teachers' reports—tuition.** If such a contract is entered into, all reports required by law to be made to the board of directors of such townships or districts and the county superintendent, by the teachers thereof, shall be made by the principal of the normal school, and all sums paid for tuition shall go to its contingent fund. [Same, §§ 3, 4.]

SEC. **2330. Report to governor.** The board shall biennially, through its secretary, make a detailed report to the governor of its proceedings during the preceding two years, which report shall show the number of teachers employed, the compensation of each, the number of pupils and classification, an itemized statement of receipts and expenditures, and such further information with such recommendations as may be regarded important to the interests of the institution, and with reference to its connection with the educational work of the state. [22 G. A., ch. 64, § 2; 16 G. A., ch. 129, § 9.]

SEC. **2681. Compensation of officers.** The secretary of the board shall receive such compensation as may be fixed by it, not exceeding one hundred dollars annually, with actual traveling expenses. The treasurer shall be allowed only his actual traveling expenses, the claim for which, as well as that of the secretary, to be itemized and verified before it is allowed and paid which shall be done out of the state treasury upon the warrant of the state auditor. [22 G. A., ch. 64, § 1; 16 G. A., ch. 129, § 2.]

SEC. **2682. Appropriation.** There is hereby appropriated the sum of seventeen thousand five hundred dollars annually as an endowment fund for the payment of the teachers of said normal school, and the further sum of three thousand dollars annually as a contingent fund therefor. The amount herein appropriated shall be drawn and paid quarterly on the first days of March, June, September and December, on the requisition of the board of trustees of the school.

OF COUNTY HIGH SCHOOLS.

SECTION **2728. How established.** Any county may establish a high school in the following manner: When the board of supervisors shall be presented with a petition signed by one-third of the electors of the county as shown by the returns of the last preceding election, requesting the establishment of a county high school at a place in the county named therein, it shall submit the question at the next general election to be held in the county, or at a special one called for that purpose, first giving twenty days' notice thereof in one or more newspapers published in the county, if any be published therein, and by posting such notice, written or printed, in each township of the county, at which election the vote shall be by ballot, for or against establishing the high school, the vote to be canvassed in the same manner as that for county officers. Should a majority of all the votes cast upon the question be in favor of establishing such school, the board of supervisors shall at once appoint six trustees, residents of the county, not more than two from the same township, who, with the county superintendent of common schools as president, shall constitute a board of trustees for said high school. [C.'73, §§ 1697–9, 1701.]

SEC. **2729. Trustees—officers.** The trustees, within ten days after appointment, shall qualify by taking the oath of civil officers, and giving bond in such sum as the board of supervisors may require, with sureties to be approved by it, and shall hold office until their successors are elected and qualified, who shall be elected at the general election following. The trustees, then elected, shall be divided into three classes of two each, and hold their office one, two and three years, respectively, their several terms to be decided by lot,

and thereafter two trustees shall be annually elected, the trustees so elected to qualify in the same manner and at the same time as other county officers and all vacancies occurring to be filled by appointment by the board of supervisors, the appointee to hold the office until the next general election, and a majority of which trustees shall constitute a quorum for the transaction of business. At the first meeting held in each year, the board shall appoint a secretary and treasurer from their own number, who shall perform the usual duties devolving upon like officers. The treasurer, in addition to his bond as trustee, shall give one as treasurer, in such sum and with such sureties as may be fixed by the board, and receive all moneys from all sources belonging to the funds of the school, and pay them out as directed by the board of trustees, upon orders drawn by the president and countersigned by the secretary; both of which officers shall keep an accurate account of all moneys received and paid out, and at the close of each year, and whenever required by the board, shall make a full itemized and detailed report. [C.'73, §§ 1699, 1700, 1704, 1711.]

SEC. **2730. Site—tax.** As soon as convenient after the organization of the board, it shall proceed to select the best site that can be obtained without expense to the county, at the place named in the petition upon which the vote was taken, for the erection of the necessary school buildings, the title to be taken in the name of the county, and shall also make an estimate of the amount of funds needed for building purposes, the payment of teachers' wages and contingent expenses, which shall be presented to the board of supervisors, with a certified estimate of the rate of tax required, which in no case shall exceed in any one year five mills on the dollar upon the taxable property of the county, and shall not exceed two mills on the dollar when the tax is levied for the payment of teachers' wages and contingent expenses only; the tax to be levied and collected in the same manner as other county taxes, and paid over by the county treasurer in the same manner as school funds are paid to district treasurers. [C.'73, §§ 1702–3, 1705.]

SEC. **2731. Buildings—management.** As soon as it has procured a building site and the board of supervisors has levied a tax for the purpose, it shall make such purchases of building material, and such contracts for the erection of school and appurtenant buildings as may be necessary to effectuate the purposes of this chapter, but shall make no purchases, nor enter into any contracts in any year, in excess of the funds on hand and to be raised by the levy of that year. It shall employ, when suitable buildings have been furnished, a competent principal teacher to take charge of the school, and such assistant teachers as may be necessary, and fix the salaries to be paid them, and in the conduct of the school may employ advanced students to assist in the work. Annual reports shall be made by the secretary to the board of supervisors, which report shall give the number of students, with the sex of each, who have been in attendance during the year, the branches taught, the textbooks used, number of teachers employed, salary paid to each, amount expended for library, apparatus, buildings, and all other expenses, the amount of funds on hand, debts contracted, and such other information as may be deemed important, and this report shall be printed in at least one newspaper in the county, if any is published therein, and a copy forwarded to the superintendent of public

instruction. And for their services the trustees shall each receive the sum of two dollars per day for the time actually employed in the discharge of official duties, claims for services to be presented, audited, and paid out of the county treasury, in the same manner as other accounts against the county. [C.'73, §§ 1705–6, 1710, 1712.]

SEC. **2732. Regulations.** The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as is deemed proper in regard to the studies, conduct and government of the pupils; and any pupil who will not conform to and obey such rules may be suspended or expelled therefrom by the board of trustees. [C.'73, § 1709.]

SEC. **2733. Admission.** Subject to such rules and regulations as may be adopted by the board of trustees in regard to age and grade of attainments necessary to entitle pupils to admission in the school, it shall be open to all persons in the county without charge for tuition. If at any time there shall be more applicants for admission than may be accommodated, then each district in the county shall be entitled to representation proportioned to the number of pupils which such district may have, as shown by the last report to the county superintendent, and in all such cases the school boards of the respective districts shall designate the pupils that may attend. If the school shall not be filled by pupils from the county, others may be received, upon the payment of such sum by way of tuition as may be fixed by the board of trustees, but pupils so received shall not be allowed to continue in the school to the exclusion of any resident of the county in which the school is situated. [C.'73, §§ 1707–8.]

OF THE COUNTY SUPERINTENDENT.

SECTION **2734. Qualifications—deputy.** The county superintendent, who may be of either sex, shall be the holder of a first class or state certificate or diploma and, shall during his term be ineligible to the office of school director or member of the board of supervisors. If for any cause he is unable to attend to his official duties, he may appoint a deputy, who may act in his stead, except in visiting schools and trying appeals. [16 G. A., ch. 136, § 2; C.'73, §§ 1765, 1770; R., § 2069.]

SEC. **2735. Duties—examinations.** He shall at all times comply with the directions of the superintendent of public instruction in all matters within that officer's jurisdiction, and serve as the organ of communication between him and school township, district or independent district authorities, and transmit to them or the teachers thereof all blanks, circulars or other communications designed for them. He may, at his discretion, visit the different schools in his county, and shall, upon the request of a majority of the directors of

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SECTION 2734. A deputy of the county superintendent may receive such a reasonable allowance for his services as the board of supervisors thinks best. The deputy must take the same oath as his principal, must give a bond, and both appointment and bond must be approved by the board of supervisors before the deputy may enter upon the duties of his office. Code, section 1186.

SECTION 2735. 1. The county attorney is the legal adviser of the different county officers. He should be freely consulted on questions of law upon which the superintendent is in doubt. Section 2740. Code, section 302.

any school township, district or independent district, visit any school therein, at least once during its term. On the last Friday and Saturday in each month, he shall meet and, with such assistants as he may select, examine all applicants for a teacher's certificate, and transact such other business as may come before him. Such examination shall be held at the county seat in a suitable room, which shall be provided for that purpose by the board of supervisors. Special examinations may be held elsewhere in the county at the discretion of the county superintendent. Any school officer or other person may be present at any examination. [19 G. A., ch. 161, § 2; 17 G. A., ch. 143; C.'73, §§ 1766, 1768, 1774; R., §§ 2066, 2068, 2073; C.'51, § 1148.]

SEC. **2736. Subject.** The examination shall include competency in and ability to teach orthography, reading, writing, arithmetic, geography, grammar, history of the United States, and physiology and hygiene, which latter, in each division of the subject, shall include special reference to effects of alcohol, stimulants and narcotics upon the human system. Candidates for examination in special studies need be examined in such branches only; but no

2. The superintendent in his visits should seek to aid, instruct, and inspire teachers to the employment of the best methods of teaching, governing, and conducting their schools, and should try to secure the proper classification of scholars, the arrangement of courses of study, and the care and protection of school property. He should study to awaken among parents and children a deeper interest in the public schools, so as to secure improved attendance, deportment and scholarship, and induce more frequent visits of parents and school officers. A judicious visit from the superintendent may often infuse new life into the school.

3. The county superintendent should carefully observe the condition of the schoolhouse and surroundings, note all defects, and at once notify the director or board of the same.

4. There is no direct provision of law for paying the assistants whom the county superintendent may call to his aid in examinations. Section 2742 gives boards of supervisors power to allow the county superintendent additional compensation for this and any other proper purpose.

5. Applications made at irregular times should be rejected, unless good reasons are given for not attending the regular examinations. The interests of the schools do not require frequent or individual examinations, and the time of the superintendent can be more profitably employed in other necessary duties.

6. A certificate may not be issued upon an examination taken in another county. In addition to furnishing any credentials or other written evidence which the examiner may require, the applicant must appear in person.

7. The examination may be taken in parts, at different times, and may be continued until the record is made closing the examination.

8. When the examination is completed, and the record made, a subsequent appearance of the same person must constitute him, in a legal sense, a new applicant. But until such record is closed, the county superintendent may keep in abeyance the matter of decision upon the applicant, and allow such applicant longer time and greater opportunities without requiring an additional payment.

SECTION 2736. 1. Written examinations afford a good test of scholarship, and furnish the basis of a permanent record. The examination should be thorough, to determine the attainments of the applicant in the branches he is to teach.

2. It is usually desirable that some work of every applicant shall be filed with the county superintendent, as a record which will serve to prove for the candidate that he received his certificate upon merit.

special teacher shall be employed to teach any study not included in the certificate. A record shall be kept of all examinations made, and the names, ages and residence of the applicants, with the date and result thereof. [21 G. A., ch. 1, §§ 1, 3; 17 G. A., ch. 143; C. '73, §§ 1766, 1768; R., §§ 2066, 2068; C. '51, § 1148.]

SEC. **2737. Certificate—revocation.** If the examination is satisfactory, and the applicant is of good moral character, of which fact the superintendent shall require proof unless he has a personal knowledge thereof, and is in all other respects possessed of the necessary qualifications as an instructor, a certificate to that effect shall issue for a term not to exceed one year. But to applicants passing an

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3. Success in teaching the different branches may be best determined by actual observation of the teacher's work in his school. Quite often a searching and skillfully conducted oral examination in methods will test the applicant's ability to instruct.

4. It is the intention of the law that the study of physiology and hygiene with special reference to the effects of alcoholic stimulants, narcotics, and poisonous substances, shall have at least equal rank with and be considered of as great importance as other branches of study.

5. If it is desired that branches additional to those included in the usual certificate shall be taught, such fact should be mentioned as a part of the contract, and the teacher is required to have the certificate for such additional branch or branches, before beginning to teach.

6. As no person may give instruction in any study for which such person does not hold a valid certificate, every certificate should not fail to enumerate the branches or subjects which the holder is qualified to teach.

7. The examination manuscripts of applicants are for the information and special use of the county superintendent and do not become a part of the public records of the office. Candidates may not demand, as a right, the privilege of inspecting their markings. Decisions, 42.

8. The record required by this section should be carefully made, as the items form a part of the county superintendent's annual report to the superintendent of public instruction.

SECTION 2737. 1. County superintendents should remember that they are to inquire, not only into the literary qualifications of the applicant, but they must also certify that they are satisfied that the applicant possesses a good moral character, and the essential qualifications for governing and instructing children and youth. Forms 1, 2, and 3.

2. Scholarship, good moral character, ability to govern, aptness to teach, our law requires all these qualifications in those to whom are intrusted the highest interests of the state, the education of its youth.

3. Applicants may be required to present such evidences of good moral character as the county superintendent shall demand. The superintendent should be fully satisfied in every particular mentioned in the law, before issuing the certificate. Decisions, 42. Forms 1, 2, and 3.

4. The examination papers of applicants for certificates and any testimonials with regard to the moral character of an applicant belong to the county superintendent individually and are for his guidance alone. They do not become a part of the official records of the county superintendent's office. Note 7 to section 2736.

5. The county superintendent is sole judge of the manner and extent of the examination he will require of applicants for certificates to teach in his county. 52 Iowa, 111. Decisions, 42.

6. Unless the county superintendent is fully satisfied in all respects it is his plain duty to refuse to grant a certificate. The matter calls for the exercise of a

examination in the following additional branches: didactics, elementary civics, elementary algebra, elements of physics, and elementary economics, a certificate shall issue for a term of two years, upon proof of thirty-six weeks' successful experience in teaching. A certificate must be revoked at any time, for any cause which would have justified a refusal to grant the same, after an investigation of the facts, of which the teacher shall have personal notice and an opportunity to be present and make defense. The superintendent shall revoke the certificate of any teacher who shall fail or neglect to comply with the provisions of law relating to the teaching of physiology and hygiene, and such teacher shall be disqualified for

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careful discretion, as the moral character of the teacher and his influence over his school is of greater importance than even his literary qualifications.

7. As an almost exceptional responsibility is placed upon the county superintendent by the law, it is expected that an applicant for a certificate will comply cheerfully with all reasonable and uniform requirements, and that he will improve every opportunity to satisfy that officer as readily and fully as possible as to the character and essential qualifications of the applicant. A disposition to be mutually helpful will not fail to be an advantage to both the county superintendent and the teacher.

8. There is no provision for the renewal or indorsement of a certificate.

9. By section 2738 the institute fund is entitled to two dollars from every one receiving a two years' certificate, and one dollar from every other applicant.

10. There is no provision of law for a so-called permit to teach. A county superintendent may give no other authority than a certificate.

11. After ascertaining the general attainments of a teacher, inspection of his school work should determine largely the grade of certificate.

12. A county superintendent is justified in refusing a certificate to an applicant who is in any way physically disqualified to govern and instruct children and youth.

13. For many years county superintendents have been limited as to the minimum age of those receiving certificates. The restriction gives quite universal satisfaction. It is believed that in general, boys under nineteen, and girls under seventeen years of age, may not be expected to possess that maturity of mind and strength of character needed to manage a school successfully, and to determine wisely the many questions daily demanding an answer from the teacher.

14. A county superintendent may fix a different minimum age not lower than that determined by the superintendent of public instruction, and may refuse to grant a certificate to any one below such minimum age. This regulation will, of course, refer to all applicants of a given class, in that county.

15. The restriction regarding the minimum age of those who may receive certificates is binding alike on all county superintendents. To make an exception is partiality, besides being unfair to the very large number who cheerfully abide by the regulation. The rule may seem to apply with severity in some individual instances, but to conform to the requirement will save a county superintendent much subsequent difficulty.

16. A county superintendent may not refuse a certificate for the single reason that the applicant did not attend the normal institute. But in estimating the qualifications of an applicant, the county superintendent may give such credit for attendance and good work done at the institute as seems to him best.

17. It is an excellent practice to give credit for attendance and good work at the annual county institute. This credit may be given in the form of a special mention, or as an addition to the general average.

18. Any plan that would seem to indicate detracting from the ability of the applicant is objectionable, but to magnify the value of presence and activity in

teaching in any public school for one year thereafter. [26 G. A., ch. 39; 21 G. A., ch. 1, § 3; C. '73, §§ 1767, 1771; R., §§ 2067, 2070.]

SEC. **2738. Normal institute.** The county superintendent shall hold, annually, a normal institute for the instruction of teachers and those who may desire to teach, and, with the concurrence of the superintendent of public instruction, procure such assistance as may be necessary to conduct the same, at such time as the schools in the county are generally closed. To defray the expenses of said institute, he shall require the payment of a registration fee of one dollar from each person attending the normal institutes, and the payment in all cases of one dollar from every applicant for a certificate: *provided* that, if the applicant is granted a two-years' certificate, he shall pay one dollar additional. He shall monthly, and at the close of each institute, transmit to the county treasurer all moneys so received, including the state appropriation for institutes, to be designated the "institute fund," together with a report of the name of each person so contributing, and the amount. The board of supervisors may appropriate out of the general fund such additional sum

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the work of the institute is to be commended. There is a very general sentiment favoring the employment of teachers who avail themselves of every such means of improvement and professional advancement.

19. The certificate of the teacher may not be addressed to a particular board of directors, nor be confined in its application to one school or grade of schools. The teacher holding a certificate may be employed by any board of directors, and no board may discredit such certificate by refusing to accept it to the full extent to which it is valid.

20. A teacher's certificate must be valid for any school in the county. A county superintendent may not specify in connection with a certificate issued what school the person shall teach. In general any condition imposed must apply also to every other applicant of the same class.

21. The notice should contain an explicit statement of the charges against which the teacher is expected to make his defense.

22. A copy of the revocation should be transmitted to the secretary of each district, and the secretary should immediately notify the board of the fact. The teacher should also be served with a copy. Form 4.

23. Any person aggrieved by an action of the county superintendent in refusing to grant a certificate or in revoking the same, may apply to him for a rehearing, the proceedings to correspond as nearly as possible to the proceedings in the case of an appeal from a board of directors. If any party is aggrieved by the result of this investigation, an appeal may be taken therefrom to the superintendent of public instruction.

24. Though an appeal will lie in such cases, the discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction, unless it is clearly shown that the county superintendent violated law or abused discretion. Decisions, 42 and 70.

25. The same weight which county superintendents are required to accord to discretionary acts of boards will be given by this department to the discretion of county superintendents in granting, refusing, or revoking certificates, and in granting or refusing to grant a rehearing in ordinary cases of appeal. Decisions, 58.

SECTION 2738. 1. The normal institute must be held when the public schools are mostly closed. Section 2773 provides that no school may be in session during a teachers'institute, except by written permission of the county superintendent.

2. County superintendents will determine the time and place, and suggest the names of conductor and instructors for approval. Form 5.

as it may find necessary for the further support of such institute. All disbursements of the institute fund shall be upon the order of the county superintendent, and no order shall be drawn except for bills presented to and approved by him for services rendered or expenses incurred in connection with the institute. [17 G. A., ch. 54; 15 G. A., ch. 57; C. '73, § 1769.]

SEC. 2739. **Reports.** The county superintendent shall annually, on the first Tuesday in October, make a report to the superintendent of public instruction, giving a full abstract of the several reports made to him by the secretaries and treasurers of school

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3. The length of time during which the normal institute shall remain in session is left to the discretion of the county superintendent. This will depend largely upon the amount of the institute fund.

4. Young and inexperienced teachers will not expect to receive certificates, unless of the lowest grade, without regularly attending the normal institute. By means of the large fund and the length of time this institute may remain in session, it can, if the proper means are employed, be rendered invaluable to teachers. The benefits they will receive should secure voluntary and general attendance.

5. A conductor of successful experience in institute work, able to give plain, practical instruction in methods of school organization, government and teaching, should be secured early. The other instructors should be superior teachers of recent experience, and usually one or more lady teachers should be employed.

6. County superintendents should have sufficient evidence of the abilities of their instructors before engaging them. In all cases where strangers are employed, references should be required, and inquiries made at the state department will frequently secure the proper knowledge.

7. The superintendent should be director, assuming the general oversight and direction of the institute, but should not act as conductor. He is entitled to his *per diem* for any service in connection with the institute, as for other official duties, but receives no part of the institute fund.

8. These normal institutes are short training schools; their object is to reach and correct the greatest defects found in the schools. The superintendent in visiting schools should seek to discover the most prominent defects and wants in the methods of instruction. The normal institute will afford effective means of reaching and correcting these faults. The great object is to instruct teachers how to teach children.

9. In normal institutes, efficient and earnest instructors should be employed. Charts and other appliances should be amply provided. Physicians and scientists may be invited to lecture, and teachers should be exhorted to be sincere, fearless, and faithful in the discharge of their duty.

10. It is apparent that the registration fee may not be collected from any one not attending the normal institute.

11. The reports and payments to the county treasurer should be made the first of each month, and at the end of the institute. Forms 6, 7, 8, and 9.

12. It is the duty of the board of supervisors, at the close of his term of office, to settle with the county superintendent, as with other county officers, according to the provisions of the law.

SECTION 2739. 1. The blanks for the annual report of the county superintendent, together with instructions for making the report, are furnished by the superintendent of public instruction.

2. The superintendent may test the accuracy of the treasurers' reports by consulting the books of the county treasurer. The amount of the several funds reported received from the district tax, also the amount received from the semi-annual apportionments, must agree with the county treasurer's receipts.

boards, stating the manner in and extent to which the requirements of the law regarding instruction in physiology and hygiene are observed, and such other matters as he may be directed by the state superintendent to include therein, or he may think important in showing the actual condition of the schools in his county. At the same time, he shall file with the county auditor a statement of the number of persons of school age in each school township and independent district in the county. He shall also report, as provided by law, to the superintendent of the college for the blind, the name, age, residence and postoffice address of every person, resident of the county, so blind as to be unable to acquire an education in the common schools; to the superintendent of the institution for the deaf and dumb, with the same detail, all persons of school age whose faculties in respect to hearing or speaking are so deficient as to prevent them from acquiring an education in such schools; and to the institution for the feeble minded, all persons of like age who, because of mental defects, are entitled to admission therein. [21 G. A., ch. 1, § 2; C.'73, §§ 1771, 1772; R., § 2070.]

SEC. **2740. Enforcing laws.** The county superintendent shall see that all provisions of the school law, so far as it relates to the schools or school officers within his county, are observed and enforced, specially those relating to the fencing of schoolhouse grounds with barb wire, and the introduction and teaching of such divisions of physiology and hygiene as relate to the effects of alcohol, stimulants and narcotics upon the human system, and to this end he may require the assistance of the county attorney, who shall at his request bring any action necessary to enforce the law or recover penalties incurred. [21 G. A., ch. 1, § 2; 20 G. A., ch. 103, § 2.]

SEC. **2741. Penalty.** Should he fail to make the report herein required of him to the superintendent of public instruction or the county auditor, he shall forfeit to the school fund of his county the sum of fifty dollars, to be recovered in an action brought by the county for the use of the school fund, and in addition shall be liable for all damages occasioned thereby. [C.'73, § 1773; R., § 2072.]

SEC. **2742. Compensation.** He shall receive four dollars per day for the time actually engaged in the performance of his duties, the expenses of necessary office stationery and postage, and those incurred in attendance upon meetings called by the superintendent

3. All errors should be corrected. The amounts reported on hand in the last report from the district treasurer should the following year always be reported as the amounts on hand at last report.

4. The abstract of the enumeration of children in each district should be made with special care, complete and accurate, otherwise the county will not obtain its just proportion of the income of the permanent school fund.

5. Should the district secretaries or treasurers fail to make their reports in time, the superintendent should take prompt measures to secure them, going after them if necessary.

6. The blanks for the reports to the different institutions should be furnished by the superintendents in charge of such institutions.

SECTION 2742. 1. The board of supervisors shall furnish the county superintendent with an office at the county seat, together with fuel, lights, blanks, books and stationery necessary and proper to enable him to discharge the duties of his office, but in no case shall such officer be permitted to occupy an office also occupied by a practicing attorney. Code, section 468.

of public instruction; claims therefor to be made by verified statements filed with the county auditor, who shall draw his warrant upon the county treasurer therefor; and the board of supervisors may allow him such further sum by way of compensation as may be just and proper. [19 G. A., ch. 161, § 1; C.'73, § 1776; R., § 2074.]

OF THE SYSTEM OF COMMON SCHOOLS.

SECTION **2743. School districts—corporate powers.** Each school district now existing shall continue a body politic as a school corporation, unless hereafter changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained. [C.'73, §§ 1713, 1716; R., §§ 2022, 2026; C.'51, § 1108.]

SEC. **2744. Names.** District townships now existing shall hereafter be called school townships, subdivisions of which shall be called subdistricts. School corporations shall be designated as follows: The school township of (naming civil township), in the county of (naming county), state of Iowa; or, the independent school district of (naming city or incorporated town, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the rural independent school district of (some appropriate name or number), township of (naming township), in the county of (naming county), state of Iowa. [C.'73, § 1716; R., § 2026; C.'51, § 1108.]

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2. The board of supervisors may not limit the county superintendent as to the number of days he shall give to his work, in order to comply with his oath of office. Having filed his sworn statement in the form prescribed by the board, he is entitled to his *per diem* for time actually employed. If he has filed a false statement he may be tried for maladministration in office. Code, section 1251.

3. It is the intention of the law that each county superintendent shall determine the time necessary to be employed in the duties of his office, and the division of labor to be made. Of course, specific duties are required, such as making certain reports at times designated, visiting a school if requested by the board, and that he shall conform to instructions from the superintendent of public instruction. But in general, he is to decide for himself, as indicated in his oath of office, what means will best advance the work in his county.

SECTION 2743. 1. In boundaries, school townships usually coincide with civil townships.

2. Section 3936, Code, provides that a municipal or political corporation shall not be garnished. However, the corporation may waive exemption from this process. 25 Iowa, 315.

3. The policy of our law is, that the territory once organized for school purposes must always remain within some jurisdiction, and that it may not be detached from the jurisdiction to which it belongs without at the same time becoming a separate jurisdiction or a part of another jurisdiction for school purposes. 82 Iowa, 10. Decisions, 28 and 57.

SECTION 2744. 1. A subdistrict is not a corporation, and hence can neither hold property nor perform any corporate act. Decisions, 11.

2. In suits, contracts, and conveyances, the corporate name should be strictly observed.

3. At their annual meeting, the electors of any rural independent school district may vote by ballot to change the name of the district, and the board will be guided by this expressed wish.

SEC. **2745. Directors.** The affairs of each school corporation shall be conducted by a board of directors, the members of which in all independent school districts shall be chosen for a term of three years, and in all subdistricts of school townships for a term of one year. [26 G. A., ch. 40; 18 G. A., ch. 143; 17 G. A., ch. 113; 15 G. A., ch. 27; C. '73, § 1802; R., §§ 2099, 2100, 2106.]

SEC. **2746. Annual meeting of corporation.** A meeting of the voters of each school corporation shall be held annually on the second Monday in March for the transaction of the business thereof. Notice in writing of the place, day, and hours during which the meeting will be in session, specifying the number of directors to be elected, and the terms thereof, and such propositions as will be submitted to and be determined by the voters, shall be posted by the secretary of the board in at least five public places in said corporation, for not less than ten days next preceding the day of the meeting. The president and secretary of the board, with one of the directors, shall act as judges of the election. If any judge of election is absent at the organization of the meeting, the voters present shall appoint one of their number to act in his stead. The judges of election shall issue certificates to the directors elected. [19 G. A., ch. 51; 18 G. A., ch. 7, § 1; 18 G. A., ch. 63; C. '73, §§ 1717, 1719; R., §§ 2027–8, 2031, 2033; C. '51, §§ 1111, 1114–15.]

SEC. **2747. Electors.** To have the right to vote at a school meeting a person must have the same qualifications as for voting at a general election, and must be at the time an actual resident of the corporation or subdistrict. In any election hereafter held in any school corporation for the purpose of issuing bonds for school purposes or for increasing the tax levy, the right of any citizen to vote shall not be denied or abridged on account of sex, and women may vote at such elections the same as men, under the same restrictions and qualifications, so far as applicable. [25 G. A., ch. 39.]

SECTION 2746. 1. The meeting cannot be adjourned to another day, and must be held at the time and in the manner directed by the law.

2. Ten days' previous notice should be given by the district secretary, but as the law fixes the day of the meeting, a failure to give full notice, or any notice at all, though a violation of law, will not invalidate the proceedings of the meeting, if one is held at the usual time and place. 10 Iowa, 212. Form 10.

3. The president, and secretary, with a director, are the regular officers of this meeting, and should act as such if present. Form 12.

4. It is essential that the secretary make a full and accurate record of the proceedings, which should be submitted to the president for his approval at the close of the meeting, and afterwards recorded in the district records. Form 11.

5. In any district of 5,000 or more the polls must be open from nine A. M. to seven P. M.; in all independent school districts of less than 5,000, the polls must open at one P. M., and remain open at least five hours; in all other independent districts and in school townships the polls must open at one P. M., and remain open not less than two hours. Section 2754.

SECTION 2747. 1. To be entitled to the right of suffrage a person must be a male citizen of the United States, twenty-one years of age, a resident of the state six months next preceding the election, and of the county sixty days. Constitution, article 2, section 1. 69 Iowa, 368 and 75 Iowa, 220.

2. The declaration of intentions by one who expects to become fully naturalized, does not entitle such person to vote. In some states this is a fact, but in Iowa what is called second papers must be taken out; that is, an elector must be

SEC. **2748. Officers—qualifications.** A school officer or member of the board may be of either sex, and must at the time of election or appointment be a citizen and a resident of the corporation or subdistrict, and over twenty-one years of age, and, if a man, he must be a qualified voter of the corporation or subdistrict. [16 G. A., ch. 136.]

SEC. **2749. Powers.** The voters assembled at the annual meeting shall have power:

1. To direct a change of text-books regularly adopted;
2. To direct the sale or make other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds of such sale;
3. To determine upon added branches that shall be taught, but instruction in all branches except foreign languages shall be in English;
4. To instruct the board that school buildings may or may not be used for meetings of public interest;
5. To direct the transfer of any surplus in the schoolhouse fund to the teachers' or contingent fund;
6. To authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses;
7. To vote a schoolhouse tax, not exceeding ten mills on the dollar in any one year, for the purchase of grounds, construction of schoolhouses, the payment of debts contracted for the erection of schoolhouses, not including interest on bonds, procuring libraries for and opening roads to schoolhouses.

The board may, or, upon the written request of five voters of any rural independent district, or of ten voters of any school township, or of twenty-five voters of any city or town independent district having a population of five thousand or less, or of fifty voters of any other city or town independent district, shall, provide in the notice for the annual meeting for submitting any proposition authorized by law to the voters. All propositions shall be voted upon by ballot in substantially the following form: "Shall a change of text-books be directed?" (or other question as the case may be);

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either a native born citizen, or a naturalized citizen, must be a male, and not disfranchised in any way mentioned by the law.

3. The law confers upon women the right to vote upon only the matters distinctly mentioned. They may participate in a vote on issuing bonds for school purposes, or a vote for the purpose of increasing the tax levy. But they may not vote for members of the board nor upon any other matter than as mentioned.

4. A separate ballot box must be provided for the ballots cast by women, and a separate canvass made of their votes. Code, section 1131.

SECTION 2748. 1. No person shall be deemed ineligible by reason of sex, to any school office.

2. A person cannot remain an officer or member of the board and reside in another district, even though in the same civil township.

SECTION 2749. 1. The voters have only such powers as are conferred by the statute, either expressly or by reasonable implication.

2. The voters of any district when assembled at their annual meeting may direct that a schoolhouse or the schoolhouse grounds not needed for public school purposes may be rented, leased, or the use thereof granted, for any purpose that will not interfere with the subsequent use or value of such schoolhouse property for public school purposes.

and the voter shall designate his vote by writing the word "yes" or "no" in an appropriate place on the ballot. [21 G. A., ch. 131, § 1; 19 G. A., ch. 51; 18 G. A., ch. 63; C.'73, §§ 1717, 1807; R., §§ 2027–8, 2033; C.'51, §§ 1114, 1115.]

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3. The voters may exercise their right to dispose of schoolhouse property only when assembled at their annual meeting on the second Monday in March, or at a special meeting called under section 2750. They may not exercise this right at a special meeting called to vote bonds.

4. Schoolhouses cannot be sold without previous direction of the voters, but their action in voting a tax for the erection of a new schoolhouse on the old site gives the board authority to remove or dispose of the old house.

5. The voters have no authority to instruct the board to loan money belonging to the district, nor to order money invested in government bonds.

6. The general statement is that when an amount has been voted for a specific purpose, the parties directly interested thereby acquire a vested right in such money appropriated, of which they may not be deprived, even by the voters. 50 Iowa, 648.

7. The only change of money from one fund to another possible under the law is the transfer of schoolhouse funds to either of the other funds.

8. If the voters direct that any additional branches shall be taught in one or all of the schools, their action is mandatory, and the board is bound to endeavor in good faith to fulfill such wish.

9. The voters may not limit or restrict the board to the adoption of a course of study including only such branches as the voters may name. Nor may the voters direct that a particular branch, or certain studies, shall not be taught. It is the province of the board to decide what branches besides those named by the voters shall be included in the course of study and taught in the schools.

10. The voters have no power to prohibit any branch being taught, if introduced by the board, neither has the board power to prevent the teaching of any study which the voters have directed shall be taught.

11. All schoolhouse taxes must be voted by the voters of the corporation, or of the subdistrict; this power cannot be delegated to the board.

12. The specific sum of money deemed necessary, and not a certain number of mills on the dollar, should be voted, except when a district lies in two counties. The percentum necessary to raise this sum is determined by the board of supervisors.

13. The power to vote schoolhouse taxes belongs exclusively to the voters. The sums necessary for the teachers' and contingent funds are determined by the board. Section 2806.

14. It is within the power of the voters when assembled at their annual meeting to direct that the board shall build a cave near any schoolhouse.

15. Failing to carry out instructions from this meeting, the board may be compelled by mandamus to show reason why the expressed wish of the voters has not been complied with. Decisions, 17.

16. A vote upon matters which by the law are to be determined by the board, is not binding upon the board, but is only suggestive. In such matters, the board will still be left free to exercise the discretion vested in it by the law.

17. In order that action may be taken at an annual meeting, it is not essential that notice shall be given that such a matter will be presented at the meeting. When assembled, the voters have power to transact any business which may come before them under the law.

18. A subdistrict has no legal claim upon schoolhouse property, although in equity a tax voted to build in a certain subdistrict must be expended as voted, and when a schoolhouse has been built or repaired from schoolhouse funds raised

SEC. 2750. **Special meeting.** The board of directors may call a special meeting of the voters of any school corporation by giving notice in the same manner as for the annual meeting, whenever the corporation has lost the use of a schoolhouse by fire or otherwise, which shall have the powers given to a regular meeting with reference to the sale of school property and the application to be made of the proceeds, and to vote a schoolhouse tax for the purchase of a site and the construction of a necessary schoolhouse, and for obtaining roads thereto. [24 G. A., ch. 21; 18 G. A., ch. 84.]

SEC 2751. **Subdistrict meeting.** The meeting of the voters of each subdistrict of a school township shall be held annually on the first Monday in March, and shall not organize earlier than nine o'clock A. M., nor adjourn before twelve o'clock M. Notice in writing of the time and place of such meeting and the amount of schoolhouse tax to be voted shall be given by its director, or if there is none by the school township secretary, by posting in three public places in the subdistrict for five days next preceding the same. The voters shall select a chairman and secretary of the meeting who shall act as judges of election, and shall also elect a director for the subdistrict by ballot. The vote shall be canvassed by the judges of election, and the person receiving the highest vote shall be declared elected. [22 G. A., ch. 51; 18 G. A., ch. 7, § 1; C.'73, §§ 1718–19, 1789; R., §§ 2030–1; C.'51, § 1111.]

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upon that subdistrict alone, even the voters should recognize the vested right of the subdistrict to retain such property and to enjoy its use.

19. If it is desired to move the schoolhouse out of the subdistrict the voters of the school township must first so order at the annual meeting. Decisions, 13.

20. It is the exclusive province of the courts to determine questions with relation to any vote at a school meeting, or with relation to the choice of members of the board or of officers of the board. Notes 12 to 16 inclusive, to section 2758.

SECTION 2751. 1. The object is to prevent a few designing persons from meeting at an unusual hour, dispatching the business with unseemly haste, and adjourning before many of the electors arrive. The meeting should be conducted with entire fairness, and an opportunity given for an expression of the real sentiment of the subdistrict.

2. The law contemplates a continuous session of at least three hours.

3. If subdistrict boundaries are in controversy by way of appeal, the election for directors should be made on the basis of the status of the subdistricts on the day of election.

4. In case there is no director, the above notice must be given by the secretary of the school township. It must be posted five days previous to the meeting, in at least three public places in the subdistrict. The notice should designate the hour of meeting, which cannot be earlier than 9 o'clock A. M. Form 13.

5. Even if the notice of the meeting required by the law has not been given, the voters are not released from their duty to hold the subdistrict meeting at the usual time and place. When they are assembled it may be found that important business will be brought before them.

6. This section clearly provides how a tie vote shall be decided. If more than two persons have each an equal number of votes, the same rule will apply.

7. The chairman and the secretary are not required to qualify.

8. A judge of election is entitled to his vote as much as any other elector.

9. No minor, nonresident, nor alien can take part in a meeting of voters.

10. If the voters desire to hold a caucus, it should be done before the subdistrict meeting is called to order.

SEC. **2752. Number of directors.** The board of directors of a school township shall be composed of one director from each subdistrict. But when there are only two subdistricts a third director shall be elected at large by all the voters of the school township. When the school township is not divided into subdistricts, a board of three directors shall be elected at large, on the second Monday in March, by all the voters of the school township. [15 G. A., ch. 27; C. '73, §§ 1720–1; R., §§ 2031, 2035, 2075–6; C. '51, §§ 1112, 1721.]

SEC. **2753. Special schoolhouse tax.** At the annual subdistrict meeting, or at a special meeting called for that purpose, the voters may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the school township, ten days' previous notice having been given, but the amount so voted, including the amount voted by the school township, shall not exceed in the aggregate the sum of fifteen mills on the dollar. The sum thus voted shall be certified forthwith by the secretary of said subdistrict meeting to the secretary of the school township, and shall be levied by the board of supervisors only on the property within the subdistrict. [C. '73, § 1778; R., §§ 2033–4, 2037, 2088.]

SEC. **2754. Elections in independent districts—tie vote.** At the annual meeting in all independent districts members of the board shall be chosen by ballot. In any district including all or part of a city of the first class, or a city under special charter, the board shall consist of seven members, three of whom shall be chosen on the second Monday in March, 1898, two on the second Monday in

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11. The selection of a director should be a matter of great care. As he may receive no compensation from the district, he should be a person whose interest will lead him to be a frequent visitor of the school, and who will see that the schoolhouse is provided with all that will add to the comfort of the teacher and scholars and promote the highest welfare of the school.

12. A member or officer of the board must have the qualifications of an elector, if a male, but no person is ineligible to any school office by reason of sex.

13. The polls for the election of a director for the subdistrict must be kept open at least two hours. Section 2754.

14. Only one ballot may be taken for the election of director, and the person receiving the greatest number of votes is elected, even though he has not received a majority of all the votes cast.

15. Persons elected subdirectors in March, 1896, for three years, will hold as directors until their term of office expires, in March, 1899.

16. The school township may simply be requested, by the voters of the subdistrict, to build a schoolhouse, without asking for a definite amount of money.

17. The subdistrict voters may vote a tax for schoolhouse purposes and certify the same to the school township meeting. Form 14. Whatever portion of this sum the township voters vote will be levied upon the entire school township.

SECTION 2752. The board of a school township cannot consist of less than three members. If there are two subdistricts, the director from the school township at large should be voted for at both meetings, and to avoid confusion, tickets should specify: For director, A. B.; for director at large, C. D.

SECTION 2753. The vote should be certified to the secretary of the school township. Forms 14 and 16.

SECTION 2754. 1. Any election by the people must be held on the day designated, and officers must be elected by a single ballot.

2. The practice of taking an informal ballot for the purpose of placing persons in nomination is not to be commended. Such nominations should be made outside the meeting, or at least before the meeting is organized.

March, 1899, and two on the second Monday in March, 1900. In all other independent city or incorporated town districts the board shall consist of five members, one of whom shall be chosen on the second Monday in March, 1898, two on the second Monday in March, 1899, and two on the second Monday in March, 1900. In all rural independent districts the board shall consist of three members, one of whom shall be chosen on the second Monday in March, 1898, and one each year thereafter. In districts composed in whole or in part of cities or incorporated towns, a treasurer shall be chosen in like manner, whose term shall begin on the third Monday in March and continue for one year, or until his successor is elected and qualified. The term of office of the incumbent treasurer in said districts shall expire on the third Monday in March, 1898. In such districts the polls must remain open not less than five hours, and in rural independent districts and school townships not less than two hours. In each case the polls shall open at one o'clock P. M., except as provided in section twenty-seven hundred and fifty-six of this chapter. A tie vote for any elective school office shall be publicly determined by lot forthwith, under the direction of the judges. [22 G. A., ch. 51; 18 G. A., ch. 7, § 2; C.'73, §§ 1789, 1808.]

SEC. 2755. **Election precincts—register of voters—notice.** Each school corporation having five thousand or more inhabitants may be divided into not more than five precincts, in each of which a poll shall be held at a convenient place, fixed by the board of directors, for the reception of the ballots of voters residing in such precinct. A separate register of the voters of each precinct shall be prepared by the board from the register of the electors of any city included within such school corporation, and for that purpose a copy of such register of electors shall be furnished by the clerk of the city to the board of directors. Before each annual meeting these registers shall be revised and corrected by comparison with the last register of elections of such cities, and shall have the same force and effect at school meetings held under this section, in respect to the reception of votes thereat, as the register of election has by law at general elections; but nothing in this section shall be construed to prohibit women from voting at all elections at which they are entitled to vote. The secretary must post a notice of the meeting in a public place in each precinct at least ten days before the meeting, and by publication for two weeks preceding the same in some newspaper published in the corporation, such notice to state the time, respective voting precincts and the polling place in each precinct, and also to specify what questions authorized by law, in addition to the election of director or directors, shall be voted upon and

3. In all cases, it would be well for the ballot to state the term voted for, in connection with the name of the person.

4. All vacancies should also be filled by election, and the ballot should designate the vacancy to be filled, and the persons so elected hold for the remainder of the unexpired term.

5. This section clearly provides how a tie vote shall be decided. If more than two persons have each an equal number of votes, the same rule governs.

6. There is no provision of law by which judges at school elections may receive pay. Note to section 2756.

SECTION 2755. No registration of voters shall be required for school elections, except as provided in this section. Code, section 1078.

determined by the voters of the several precincts. [18 G. A., ch. 8, §§ 1–4.]

SEC. **2756. Conduct of elections.** As judges of the election referred to in the preceding section, the board shall appoint one of its number and two voters of the precinct, one of whom shall act as clerk, who shall be sworn as provided in case of a general election. If any person so appointed fails to attend, the judge or judges attending shall fill the place by the appointment of any voter present, and like action shall follow a refusal to serve or to be sworn. Should all of the appointees fail to attend, their places shall be filled by the voters from those in attendance. The board shall provide the necessary ballot box and poll-book for each precinct, and the judges shall make and certify a return to the secretary of the corporation of the canvass of the votes for office and upon each question submitted. On the next Monday after the meeting the board shall canvass the returns made to the secretary, ascertain the result of the voting with regard to every matter voted upon, declare the same, cause a record to be made thereof, and at once issue a certificate to each person elected. At all meetings held under this and the next preceding section, the polls shall be kept open from nine o'clock A. M. until seven o'clock P. M. [Same, §§ 5, 6.]

SEC. **2757. Meetings of directors—election of officers.** The board of directors shall meet on the third Monday in March and September, and may hold such special meetings as may be fixed by the board or called by the president, or the secretary upon the written request of a majority of the board, upon notice specifying the time and place, delivered to each member in person, but attendance shall be a waiver of notice. Such meetings shall be held at any place within the civil township in which the corporation is situated. At the regular March meeting the board shall organize by the election of a president from its members, who shall be entitled to vote as a member. At the regular September meeting it shall elect from outside the board a secretary and a treasurer, except as provided in section twenty-seven hundred and fifty-four of this chapter, but in independent districts no teacher or other employe of the board shall

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SECTION 2756. There is no provision for paying a judge or a clerk at a school election, nor may any other expense of such election be paid from school funds, except that a ballot box and the necessary poll-book shall be provided in each precinct of districts having 5,000 and over.

SECTION 2757. 1. It is quite customary for the outgoing board to meet on the third Monday in March and complete all its work, and for the new board to organize immediately thereafter. The legality or propriety of such action has never been questioned.

2. If the president is unwilling to call a special meeting in compliance with a request from members, then a majority of the board may cause a notice of the meeting to be given, signed by the members who desire to have the meeting called, which written notice should be by the secretary handed to each member of the board and to the president.

3. As the law is silent with regard to the length of time notice should be given before the time of meeting, it is taken for granted the law intends that a reasonable notice as to time shall be given. What such reasonable notice is must be determined for each locality by the conditions.

4. If a school officer habitually or wilfully neglects his duty, and the public good suffers by such negligence, a court may compel him to attend to the necessary duties of his office or to resign. 50 Iowa, 648.

be eligible as secretary. Upon the organization of any corporation the board shall elect a secretary to hold until the September meeting following. All such officers shall be elected by ballot, and the vote shall be recorded by the secretary. [18 G. A., ch. 176; 15 G. A., ch. 27; C.'73, §§ 1721–2; R., §§ 2035–6, 2076; C.'51, § 1721.]

SEC. **2758. Qualification of directors—vacancies.** Any member of the board may administer the oath of qualification to any member elect, and to the president of the board. Each director shall qualify on or before the third Monday in March by taking an oath to support the constitution of the United States and that of the state of Iowa, and that he will faithfully discharge the duties of his office; and shall hold the office for the term to which he is elected, and until a successor is elected and qualified. In case of a vacancy, the office shall be filled by appointment by the board until the next annual meeting. [C.'73, §§ 1752, 1790; R., §§ 2032, 2079; C.'51, §§ 1113, 1120.]

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5. This section authorizes boards to hold meetings in any district within the same civil township.

6. There is no provision of law that will prevent a board from transacting business upon any other day except Sunday.

7. If the board fails to elect a president, a secretary, or a treasurer, upon the day fixed by law or at a meeting adjourned from that day to a day certain, then the incumbent may qualify anew and hold the office for another year. 75 Iowa, 196. But in order that a president may thus hold over, his term as a member of the board must also continue.

8. No person may hold two offices of the board at the same time.

9. No one may be compelled to qualify as a member or officer of the board.

10. Any duty imposed upon the board as a body must be performed at a regular or special meeting, and made a matter of record. 47 Iowa, 11.

11. The consent of the board to any particular measure, obtained of individual members when not in session, is not the act of the board, and is not binding upon the district. 67 Iowa, 164.

12. The board may receive and act upon communications from persons selected outside the board to report upon matters referred to such persons as a committee.

13. An official trust cannot be delegated. Neither the board nor any member may appoint a substitute to perform the official duties of a member or of the board.

14. Where the law requires a certain duty to be performed by the board upon a fixed day, and does not expressly forbid its performance later than the date mentioned in the law, as for instance the election of a secretary and a treasurer, an adjournment of the meeting to another fixed date will allow the transaction of the business directed to be done on the day of the regular meeting. 75 Iowa, 196.

SECTION 2758. 1. Any school director is authorized to administer to a school director elect the official oath required by law, but the secretary cannot administer this oath unless he is one of the many officers empowered by law to administer oaths.

2. The president of the board must take the oath of office according to article 11, section 5, of the constitution of Iowa.

3. A director elect may take the oath of qualification at any time between the day of election and the close of the third Monday in March. 53 Iowa, 687.

4. In case a director elect fails to qualify by the close of the third Monday in March, the incumbent may continue in office and should qualify anew. Code, section 1265.

5. If a person is elected as his own successor and fails to qualify on or before the third Monday in March, a vacancy exists which is filled by appointment.

SEC. 2759. **President—employment of counsel.** The president of the board of directors shall preside at all of its meetings, sign all warrants and drafts, respectively, drawn upon the county treasurer for money apportioned and taxes collected and belonging to his school corporation, and all orders on the treasurer drawn as provided by law, sign all contracts made by the board, and appear in behalf of his corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary. In all cases where actions may be instituted by or against any school officer to enforce any provision of law, the board may employ counsel, for which the school corporation shall be liable. [19 G. A., ch. 46; C. '73, §§ 1739–40; R., §§ 2039–40; C. '51, §§ 1122–3, 1125.]

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6. A person appointed as a member of the board is required to qualify within ten days. Code, section 1275.

7. A director continues in office until a successor is elected and qualified, whether chosen by the electors or appointed by the board.

8. Failure to appear at the meeting of the board on the third Monday in March will not prevent a qualification being valid if the member elect takes the oath of office before the close of the third Monday in March.

9. When a director is chosen by vote of the electors he is elected for a full term, or to fill the remainder of an unexpired term. Sections 1276 and 1277.

10. When an election is contested, the person elected shall have ten days in which to qualify, after the date of the decision. Code, section 1177.

11. All persons appointed to fill vacancies in office hold until the next meeting of the electors. Constitution of Iowa, article 11, section 6. Code, section 1276.

12. The failure or refusal of the proper officers to issue a certificate to a person duly elected, cannot operate to deprive such person of his rights. The certificate or commission is the best, but not the only evidence of an election, and if that be refused secondary evidence is admissible. McCrary on Elections, section 171. Decisions, 8.

13. The right or title to hold office cannot be determined by an appeal to the county superintendent. The proper remedy for any person aggrieved by the action of the board relating thereto is a petition to the district court. Code, sections 4313–4320. Decisions, 8 and 23.

14. It is the exclusive province of the courts to determine questions with relation to any vote of a school meeting, or with relation to the choice of members of the board or of officers of the board.

15. There can be no doubt that school officers should not express an official opinion upon matters entirely outside of their jurisdiction. Upon these subjects it is therefore useless to expect county superintendents, or this department, to give any other than general information, such as is presumably already within the knowledge of those applying.

16. While a board may use its own judgment as to who shall or who shall not be received as a member of the board, any one aggrieved has his remedy through the courts; that is, the membership of the board is not finally determined by any action of the board.

SECTION 2759. 1. A president whose term as director has expired may take no further part in the board, even though a new president has not been chosen.

2. The president has the right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost. Section 2757.

3. When the board is without a president, a temporary president may be appointed, who during the time he is acting as president, may sign orders and contracts and do all other acts proper to be done by the president, but he is not authorized to act except when the board is in session.

SEC. 2760. **Bonds of secretary and treasurer.** The secretary and treasurer shall each give bond to the school corporation in such penalty as the board may require, and with sureties to be approved by it, which bond shall be filed with the president, conditioned for the faithful performance of his official duties, but in no case less than five hundred dollars. Each shall take the oath required of civil officers, which shall be indorsed upon the bond, and shall complete his qualification within ten days. In case of a breach of the bond, the president shall bring action thereon in the name of the

4. The secretary is the custodian of the order book. He fills out the orders, which the president afterward signs.

5. To be valid, an order must express upon its face the fund on which it is drawn, and name the purpose for which it was issued. Section 2762.

6. An order of the board cannot be considered as officially transmitted, unless signed by the president, as well as by the secretary.

7. The failure of an officer to attach his official title to his signature will not affect the instrument so far as the district is concerned, provided the writing was authorized, and made for the district, and this fact can be shown. 7 Iowa, 509, and 11 Iowa, 82.

8. Unless the fact that official approval was authorized can be shown, personal liability may follow. 59 Iowa, 696.

9. An order on the treasurer may be signed only by authority of the board.

10. The expenses in suits provided for by this section should be paid from the contingent fund.

11. Appeals to the county superintendent or superintendent of public instruction, are not suits brought by or against the district, nor are they suits brought by or against any of the school officers, within the meaning of the law, and no charge can be made against the district for attorney fees.

12. The president does not have authority to bring suits in the name of the corporation on his own motion. 85 Iowa, 387.

13. Service of notice may be made on either the president or the secretary. Code, section 3531.

SECTION 2760. 1. The law requires all official bonds to be secured by at least two sureties who are freeholders, and whose aggregate property is double the amount of the bond, the oath of office to be subscribed on the back of the bond, or attached thereto, and the sureties to make affidavit that they are worth the amount named. Form 17.

2. At least two sureties are required, who must be resident freeholders of this state, and each of whom must make an affidavit as surety. Code, sections 358 and 359. Both the principal and sureties must qualify before some one empowered to administer oaths.

3. If the treasurer continues in office by reason of failure to elect a successor, his bond should be renewed and he should produce and account for the funds in his hands, and the statement of such settlement should be indorsed on his new bond. Code, section 1193.

4. As the bonds of the secretary and treasurer must be approved by the board, no member should become surety for one of these officers.

5. Any officer whose duty it is to give bonds for the proper discharge of the duties of his office, and who neglects so to do, is guilty of a misdemeanor, and is liable to a fine. Code, section 1197.

6. A board approving bonds known to be insufficient, does not discharge the duty incumbent upon it, and is liable on a charge of misdemeanor. 14 Iowa, 510, and 18 Iowa, 153. Code, section 4904.

7. Any officer or board who has the approval of another officer's bond, when of the opinion that the public security requires it, upon giving ten days' notice

school corporation. [15 G. A., ch. 27; C.'73, §§ 1721, 1731; R., §§ 2035, 2037, 2076; C.'51, § 1144.]

SEC. **2761. Duties of secretary.** The secretary shall file and preserve copies of all reports made to the county superintendent, and all papers transmitted to him pertaining to the business of the corporation; keep a complete record of all the proceedings of the meetings of the board and the voters of the corporation in separate books; keep an accurate, separate account of each fund with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on each fund; and he shall keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment. At

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to show cause to the contrary may require him to give such additional security by a new bond, within a reasonable time to be prescribed. Code, section 1281.

8. By petitioning the board, a surety may ask to be relieved from his obligation on a bond. Code, sections 1283–1285.

9. All the officers of the board must take the oath of office as prescribed by section 5, article 11, of the constitution.

10. The sectretary and the treasurer have ten days in which to qualify.

11. Any association or corporation which does the business of insuring the fidelity of others, and which has authority by law to do business in this state, shall be accepted as surety upon bonds required by law, with the same force and effect as sureties above qualified. Code, section 1187.

SECTION 2761. 1. A large amount of labor devolves upon the secretary. The fidelity and promptness with which he attends to his duties make his assistance very valuable to the board and the district, and determine, in a large degree, the accuracy and completeness of his annual report to the board and to the county superintendent.

2. It is essential that the record of the proceedings of the board and district meetings should be properly kept. Every transaction should be carefully noted, and the proceedings read and approved.

3. The minutes of a meeting, as recorded at the time by the secretary, must be regarded the best evidence as to the understanding the board had of a subject, at the time the question was voted upon. Decisions, 6, 27, 30 and 47.

4. The proceedings of any meeting in relation to voting schoolhouse taxes, must be submitted by the secretary, who is the proper custodian of the records, to the board, to form the basis of its action in apportioning and certifying schoolhouse taxes to the board of supervisors.

5. The failure of the secretary to record all the proceedings of the board and of the district meetings in separate books, kept for that purpose, will not render the proceedings void. 8 Iowa, 298.

6. Public records are public property, and are open to inspection at proper times by any citizen. No public officer may refuse examination of the records, but as he is their custodian, and is charged with their safe keeping, he must keep them in his possession.

7. Every officer having the custody of a public record or writing is bound to give any person, on demand, a certified copy thereof on payment of the legal fees therefor. Code, section 4638.

8. The secretary may not act as president or treasurer of the board.

9. As the secretary is the clerical officer of the board, and cares for the records of the district, we think he should act as librarian unless the board selects some other person.

10. The secretary is required by this section to keep an account current with the district treasurer. This account, properly kept, will assist the board in its frequent settlements with the treasurer, as required by section 2780.

the annual meeting he shall record, in a book provided for that purpose, the names of all persons voting thereat, the number of votes cast for each candidate, and for and against each proposition submitted. [C. '73, §§ 1741, 1743; R., §§ 2041–2; C. '51, § 1128.]

SEC. **2762. Warrants.** He shall countersign all warrants and drafts upon the county treasurer drawn or signed by the president; draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign and keep a register of the same, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at the March and September meetings furnish the board with a copy of the same. [19 G. A., ch. 46; C. '73, §§ 1739, 1782; R., §§ 2039, 2061; C. '51, §§ 1122–3.]

SEC. **2763. Notice of meetings.** He shall give ten days' printed or written notice of all meetings of the voters, posted in at least

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SECTION 2762. 1. All demands, whether by contract or otherwise, must be approved by the board when in session, before an order may be drawn on the treasurer, and the secretary should draw no order unless he is authorized to do so by a vote of the board, at a regular or special meeting. Form 19.

2. It is an advantage for the secretary to hold the order book, for by this means he can better keep his records, make the transcript to the treasurer of orders drawn, and more easily make his final report to the board in September.

3. The secretary, president, and treasurer, must conform to the instructions of the board as far as those directions are in accordance with law, but they should not comply with an instruction directing them to do an illegal act.

4. If the board appropriates money to pay its members, or for any other illegal purpose, the president and secretary should decline to sign the order, and, if drawn, the treasurer should refuse to pay it.

5. A member may relieve himself of the responsibility of an illegal act of the board, by moving that the ayes and noes be taken, and voting no. In case of prosecution the liability of such member may be materially lessened. 69 Iowa, 533.

6. The board may authorize the president and secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the full report required by section 2789 is filed in the office of the secretary.

7. School orders issued without a vote of the board or otherwise illegally issued, although they may be signed by the president and countersigned by the secretary, are not binding upon the district, neither can they acquire validity by being transferred to third parties. If illegal when issued, they are illegal forever. 19 Iowa, 199 and 248. Decisions, 10.

8. An order is not a negotiable paper. It is subject to all equities and defenses to which it would have been subject in the hands of the payee. 22 Iowa, 595; 29 Iowa, 339, and 92 Iowa, 676.

9. An order issued illegally does not acquire validity by transfer.

10. School orders should not be drawn payable on time, nor should any mention regarding interest be in the order. An order may not be made payable at any other place than the treasury of the district.

11. The registry of orders is an important matter. Every order drawn should be promptly reported to the district treasurer, as he has no other means of determining the amount of outstanding orders, and otherwise cannot comply with the law requiring him to make partial payments. Section 2768 and form 20

SECTION 2763. 1. The statutory mode of computing time excludes the day on which the notice is posted, and includes the day of meeting. 61 Iowa, 303. Code, section 48, subdivision 23. Forms 10 and 13.

five public places in the corporation, but a notice shall be posted at the door of each schoolhouse, also at or near the last place of meeting, and each notice shall state the date, hour and place of meeting, and the object. [18 G. A., ch. 59; C.'73, §§ 1742, 1822; R., § 2043; C. '51, § 1129.]

SEC. **2764. Register of persons of school age.** He shall, between the first day of September and the third Monday in September of each year, enter in a book made for that purpose, the name, sex and age of every person between five and twenty-one residing in the corporation, together with the name of the parent or guardian.

SEC. **2765. Reports.** He shall notify the county superintendent when each school is to begin and its length of term, and, within five days after the third Monday in September of each year, file with the

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2. Failure to comply with the law with respect to the notice, does not invalidate the proceedings of the meeting if regular in other respects.

3. It follows that notice through the newspapers or any other notice than as named in the law, will not take the place of the kind of notice required by the law, given in the manner indicated.

4. The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness attached to a copy of said notice or paper, and made within six months of the time of such posting up. Code, section 4681.

SECTION 2764. 1. The law intends that no part of the enumeration shall be taken before the first day of September.

2. The number of persons of school age can be obtained only by a careful and conscientious census. It includes all persons between five and twenty-one years having a residence within the district, even if married. Form 21.

3. Each district deserves credit for every one of proper age, but is entitled to no more. It is obvious that a guess or estimate regarding even a single individual is to be avoided.

4. In independent districts, it is the duty of the secretary to take the annual school enumeration required by the first clause of this section, unless the board assigns the duty to another person. In any case proper extra compensation should be given for the work required, if the district is a large one.

5. In districts formed of parts of two or more counties, the secretary should make the annual report to the county superintendent of the county in which a majority of the children reside. This report should not include those children who reside in portions of the district lying in other counties. The remaining number of children should be reported by the secretary to the superintendents of their respective counties.

6. Every person between five and twenty-one should be enumerated where he resides. A child in one of the charitable or reformatory institutions temporarily, and whose parents reside in another part of the state, or in another school district, is a resident of the district in which his parents reside, and should be enumerated there. If in the institution to remain permanently, having no parents or guardian, his residence is in the district in which the institution is located, and he should be enumerated therein.

7. The actual truth as to the number of school age is what is sought. Anything else disturbs the equality which by right exists, and prevents all from receiving exact justice in the apportionments.

SECTION 2765. 1. The name of the teacher should be given, and any other information which will aid the county superintendent in planning his work of visitation, provided for in section 2735.

county superintendent a report which shall give the number of persons in the corporation, male or female, of school age, the number of schools and branches taught, the number of scholars enrolled and average attendance in each school, the number of teachers employed and the average compensation paid per month, distinguishing the sexes, the length of school in days, and the average cost of tuition per month for each scholar, the text-books used, number of volumes in library, the value of apparatus belonging to the corporation, the number of schoolhouses and their estimated value, the name, age and postoffice address of each deaf and dumb or blind person in the corporation between the ages of five and twenty-one years, and this shall include those who are so blind or deaf as to be unable to obtain an education in the common schools, a like report as to all feeble minded children of and between such ages, and the number of trees set out and in a thrifty condition on each schoolhouse ground. [19 G. A., ch. 23, § 3; 16 G. A., ch. 112, § 1; C. '73, §§ 1744–5; R., § 2046; C. '51, §§ 1127–8.]

SEC. **2766. Officers reported.** He shall report to the county superintendent, auditor and treasurer the name and postoffice address of the president, treasurer and secretary of the board as soon as practicable after the qualification of each. [C. '73, § 1736.]

SEC. **2767. Certifying tax.** Within five days after the board has fixed the amount required for the contingent and teachers' fund, he shall certify to the board of supervisors the amount so fixed, and at the same time shall certify the amount of schoolhouse tax voted at any regular or special meeting. In case a schoolhouse tax is voted by a special meeting after the above certificate has been made and prior to the first day of September following, he shall forthwith certify the same to the board of supervisors. He shall also certify to such board any provision made by the board of directors for the payment of principal or interest of bonds lawfully issued. [C. '73, §§ 1777, 1823; R., §§ 2037, 2044.]

SEC. **2768. Duties of treasurer—payment of warrants.** The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and

2. The blanks for the annual report of the secretary are furnished by the state, through county superintendents. The secretary should copy the report required by this section, in the district records. If the original report is filed in his office, it is liable to be destroyed or mislaid, which may prove detrimental to the interests of the district.

3. Every teacher should take great pains to keep very carefully the register required by section 2789, in order that the report required by this section may be made out correctly. By the teacher doing so the secretary will be able to make his annual report with greater ease, and with added accuracy.

SECTION 2766. It is very important that the secretary should file the certificate with the county officers named, immediately after the regular meeting of the board in March and September, otherwise funds belonging to the district may be paid to persons not authorized to receive them. Whenever a change is made the county officers should be notified. Form 22.

SECTION 2768. 1. The language of this section is very explicit. It makes the treasurer the custodian of all moneys belonging to the district, which effectually precludes the idea of dividing the money belonging to any particular fund among the subdistricts. Decisions, 11.

expenditures in a book provided for that purpose. He shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount. The money collected by tax for the erection of schoolhouses and the payment of debts contracted therefor shall

2. The treasurer may pay out the funds only on the order of the president, countersigned by the secretary, and the president may not sign an order unless he is authorized to do so by the board.

3. No order shall be drawn on the district treasury, until the claim for which it is drawn has been audited and allowed. Section 2780.

4. In making payment, one order may not be given precedence before another. 40 Iowa, 620.

5. Neither the electors nor the board may authorize the treasurer to loan money belonging to the district. Code, section 4840, as note 10 to section 2769.

6. The treasurer is responsible for all moneys coming into his hands by virtue of his office, even if stolen or destroyed by fire. The board has no authority to release him, unless he accounts in full for all moneys received by virtue of his office. 37 Iowa, 550; 39 Iowa, 9; 40 Iowa, 130, and 80 Iowa, 497.

7. Having the consent of his bondsmen, the treasurer may deposit the money in some safe and secure bank. The treasurer and his bondsmen are as fully responsible as they would be if the money is held by the treasurer in person.

8. The spirit of our law forbids the electors to vote schoolhouse funds to reimburse a treasurer or his bondsmen for a loss of the money belonging to the district. There is no way under the law in which the treasurer and his bondsmen may be released from absolute liability.

9. There is no authority in law for a county treasurer and a district treasurer to keep a part of the schoolhouse fund separate as a so-called highway fund or library fund. It is obvious that all moneys collected as voted by the electors must belong to the schoolhouse fund.

10. When possible, it is desirable that the cost of removing and repairing schoolhouses shall be paid from the schoolhouse fund. If there is no schoolhouse fund on hand unappropriated, the expense of removal, if not too considerable, may be paid from the contingent fund.

11. Contingent fund may be used to erect a flag staff upon the schoolhouse or a flag pole upon the school grounds for the purpose of displaying a school flag.

12. Minor improvements, such as the erection of ordinary outhouses, fences, and the like, may be paid for from either the contingent or schoolhouse fund.

13. Ordinary repairs should be charged to the contingent fund; but when such repairs assume the magnitude of a rebuilding, or of an extensive addition, they should be charged to the schoolhouse fund.

14. Any unappropriated schoolhouse fund in the district treasury may be used for the erection or repair of schoolhouses, at the discretion of the board, without action of the electors.

15. The cost of seating new schoolhouses should be paid from the schoolhouse fund. The law does not authorize the use of the contingent fund for the erection or completion of schoolhouses, but when a house needs reseating or other repairs, the cost may be defrayed either from the contingent fund, or from any unappropriated schoolhouse fund in the treasury. 25 Iowa, 436.

16. The term school furniture, as generally used in our state, means school desks, tables, chairs, and such similar articles as are closely related to making the schoolhouse more suitable for its use as a schoolhouse: school apparatus has been understood to include the articles mentioned in section 2783, or such similar articles as would clearly come under the same designation for use in the schools for the purposes of instruction.

be called the schoolhouse fund; that for rent, fuel, repairs, and other contingent expenses necessary for keeping the school in operation, the contingent fund; and that received for the payment of teachers, the teachers' fund; and he shall keep a separate account with each fund, paying no order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied.

17. As the members of the board receive no pay for their services, if boards subscribe for a copy of any journal containing the official rulings and decisions of this department to aid them in their work, they have the right to pay for the same from the contingent fund.

18. Boards have no authority to transfer money from one fund to another, even temporarily, unless they are authorized under section 2749, subsection 5, to transfer schoolhouse fund to another fund. Notes 3 and 4 to section 2810.

19. The teachers' fund should not be divided among the subdistricts, equally, according to the number of children, or upon any other basis. This fund can be paid out only to teachers for services, upon orders authorized by the board.

20. The treasurer shall pay no order which does not specify the fund on which it is drawn, and the specific use to which the money is applied.

21. Tuition fees collected from nonresidents belong to the teachers' fund.

22. No part of the teachers' fund may be used for any other purpose than to pay teachers or to pay tuition.

23. The law requires both the secretary and treasurer to keep a register of all orders drawn on the district treasury, containing a record of each item enumerated. Form 26.

24. The board has no authority to make a contract by which school orders shall draw interest before their presentation nor a higher rate than six per cent. 90 Iowa, 53.

25. It is essential that the treasurer should know the exact amount of outstanding orders, and for this reason the secretary is required to report to him all orders drawn on the district treasury. Section 2761.

26. The register provided for in this section is indispensable to the treasurer, under the law requiring him to make partial payments on orders when he has not funds sufficient to pay them in full.

27. The treasurer may rightly object to paying an order that is defective in any of the particulars named. It is especially essential that the purpose for which the order was given shall be written in the order, and on the stub in the order book.

28. The provision as to partial payment applies to all orders on that fund. The holder of an order drawn to pay a judgment cannot insist on its being satisfied in full to the exclusion of other orders. 40 Iowa, 620.

29. By keeping a correct account of the orders, as by form 20, the treasurer will know the amount outstanding, and can readily determine what per cent on each he can pay with the funds on hand.

30. Whenever partial payment is made, the treasurer should indorse the payment on the order and take a receipt for the amount paid. When paid in full, the order should, in all cases, be indorsed by the person presenting it, and left with the treasurer. It is then a voucher for the amount paid.

31. The district treasurer should make payment pro rata upon all outstanding orders in the fund on which such order is drawn and should indorse an order, when requested, so that amounts unpaid may draw six per cent interest.

32. The remedy of any one holding an order which the treasurer refuses to pay is application to a court for a writ to compel such officer to make payment. At the final hearing before the court it will be definitely determined whether the order is of such character that it should be either paid by the treasurer or indorsed by him as not paid for want of funds.

Whenever an order cannot be paid in full out of the fund upon which it is drawn, partial payment may be made. All school orders shall draw lawful interest after being presented to the treasurer and by him indorsed as not paid for want of funds. [C. '73, §§ 1747–50; R., §§ 2048–50; C. '51, §§ 1138–40.]

SEC. 2769. **Financial statement.** He shall render a statement of the finances of the corporation whenever required by the board, and his books shall always be open for inspection. He shall make an annual report to the board on the third Monday in September, which shall show the amount of the teachers' fund, the contingent fund, and the schoolhouse fund held over, received, paid out,

SECTION 2769. 1. The interest and protection of the taxpayers require that such settlement should be made at least twice a year, and more frequently if deemed necessary, and the settlement at the end of the term requires that the funds and property shall be produced and fully accounted for, and that these facts should be indorsed upon the new bond of the treasurer, if he is re-elected. Code, section 1193, quoted in note 8 below. 69 Iowa, 269, and 91 Iowa, 198.

2. The outgoing treasurer and his bondsmen have a right to expect and to require that the board shall make a complete settlement, and the treasurer may demand and receive written evidence that such settlement is complete.

3. The responsibility of the treasurer and his bondsmen to the district is absolute, and it rests with the treasurer to deposit the money in a bank, or not, as may seem best to him, with the advice of his bondsmen.

4 It is not within the power of even the electors to release the board or its officers from their obligation to protect the funds of the district.

5. The sureties on an official bond may be held for three years from the time that it is presumed an irregularity occurred. Code, section 3447. 91 Iowa, 198.

6. The vouchers of the treasurer should not be destroyed until after three years from the expiration of a term of office. The stub books of the secretary should also be retained, and not destroyed until after several years.

7. In making settlement, the board may submit a difference with the treasurer, to arbitration. 70 Iowa, 65.

8. When the incumbent of an office is re-elected, he shall qualify as above directed; but when the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer. Code, section 1193.

9. When it is ascertained that the incumbent is entitled to hold over by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew, within the time to be fixed by the board or officer who approves the bond of such officer. Code, section 1195.

10. If any state, county, township, school or municipal officer, or officer of any state institution, or other public officer within the state, charged with the collection, safe keeping, transfer or disbursement of public money or property, fails or refuses to keep the same in any place of custody or deposit that may be provided by law for keeping such money or property until the same is withdrawn therefrom as authorized by law, or keeps or deposits such money or property in any other place than in such place of custody or deposit, or unlawfully converts to his own use in any way whatever, or uses by way of investment in any kind of property, or loans without the authority of law, any portion of the public money intrusted to him for collection, safe keeping, transfer or disbursement, or converts to his own use any money or property that may come into his hands by

and on hand, the several funds to be separately stated, and he shall immediately file a copy of this report with the county superintendent. [16 G. A., ch. 112, § 2; C.'73, § 1751; R., § 2051; C.'51, § 1141.]

SEC. **2770. Surrendering office to successor.** Each school officer, upon the termination of his term of office, shall immediately surrender to his successor all books, papers and moneys pertaining or belonging to the office, taking a receipt therefor. [C.'73, § 1791; R., § 2080.]

SEC. **2771. Quorum of board—filling vacancies.** A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. Vacancies occurring among the officers or members shall be filled by the board by ballot, and the person

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virtue of his office, he shall be guilty of embezzlement to the amount of so much of said money or the value of so much of said property as is thus taken, converted, invested, used, loaned or unaccounted for, and shall be imprisoned in the penitentiary not exceeding ten years, and fined in a sum equal to the amount of money embezzled or the value of such property converted, and shall be forever after disqualified from holding any office under the laws of the state. Any such officer who shall receive any money belonging to the state, county, township, school or municipality or state institution of which he is an officer shall be deemed to have received the same by virtue of his office, and in case he fails or neglects to account therefor upon demand of the person entitled thereto, he shall be deemed guilty of embezzlement, and shall be punished as above provided. Code, section 4840.

11. The blanks for the annual report of the treasurer are furnished by the state, through county superintendents.

12. Treasurers should take pains to mail a copy of this report at once to the county superintendent, as only by timely attention on the part of treasurers, can the county superintendent compile and forward his annual report to the superintendent of public instruction, on the first Tuesday in October.

SECTION 2770. The language of this section includes copies of the school laws, school journals, reports, and all other publications which may be received by virtue of being a school officer.

SECTION 2771. 1. In the absence of a direct provision of law, or of a by-law requiring a majority vote of all the board, or one providing that the highest vote shall carry, or a rule imposing some other limitation upon the board, a majority of the votes cast, a quorum being present, will carry a measure.

2. Boards have no authority to remove any member or officer of the board. Such removal may be made only by the courts. Code, section 1251.

3. Wilful neglect to perform duty is a misdemeanor. Code, section 4904.

4. If a director habitually or wilfully neglects the duties of his office he may perhaps be compelled by mandamus to perform them or to resign. Section 2822.

5. A vacancy can be created only by death, removal, resignation, or failure to elect at the proper election, there being no incumbent to continue in office. Code, section 1266. A failure to elect or qualify does not create a vacancy, for the incumbent, whether elected or appointed, continues in office "until his successor is elected and qualified." Code, section 1265. If the incumbent does not qualify, a vacancy exists.

6. School directors may resign at any time. A verbal or a written resignation may be tendered to the board when in session, or a written resignation may be handed to some member to be presented at a subsequent meeting, for acceptance by the board.

7. No one may be compelled to qualify as a member or officer of the board.

receiving the highest number of votes shall be declared elected and, shall qualify as if originally elected or appointed. [24 G. A., ch. 19; C.'73, §§ 1730, 1738; R., §§ 2037–8.]

SEC. **2772. Temporary officers—course of study—regulations.** The board shall appoint a temporary president and secretary, or either of them, in the absence of the regular officers, and shall prescribe a course of study for the schools of the corporation, make rules and regulations for its own government and that of the directors, officers, teachers and pupils, and the care of the schoolhouse, grounds and property of the school corporation,

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8. If a subdistrict is divided, so as to form a new one, the resident director will continue to act as though no change had been made, until the following subdistrict election.

9. If a person without the requisite qualifications, is elected a member of the board and acts with the board, being a member *de facto*, his acts will be valid, but when his disqualification becomes known, the board shall declare the place vacant and appoint his successor. 23 Iowa, 96. 70 Northwestern Reporter, 592.

10. A board may ratify or adopt such acts of officers *de facto* as the law would permit officers *de jure* to perform.

SECTION 2772. 1. The board of every district should adopt a carefully prepared course of study, to which the electors may add other branches.

2. The law does not prescribe clearly the several branches that shall be taught in the public schools, further than to require most teachers to be qualified to teach certain branches enumerated.

3. It is plainly implied that the common branches are to be included in every course of study.

4. The board of every district has the right to include music, drawing, or any other branch, in the course of study.

5. It is the province of the board to decide what branches besides those named by the electors, shall be included in the course of study and taught in the schools.

6. If it is desired that higher arithmetic, or any other advanced study, shall be taught in one or more schools in the district, the board should inclu e such branch in the course of study for such school or schools.

7. The electors may not limit or restrict the board as to a course of study. The most that the electors may do is to compel the board to provide for giving instruction in the branches ordered by the electors to be taught during the year.

8. Graduating exercises are a part of the course of study and the board may direct what exercises shall be held in connection with the closing days of school.

9. In mixed schools a close classification is very desirable. Time is saved, larger classes are secured, and the efficiency and discipline of the school are promoted by such plan.

10. A condition may exist when for a short time a board may be compelled to provide by regulation that certain pupils shall attend only one-half of the day, and others of the same grade the other half. But such arrangement could not be regarded as a permanent one.

11. A board is discharging the duty incumbent upon it to provide equal school facilities for all when it does the very best possible to overcome difficulties, and leaves nothing undone which it might properly be expected to do.

12. Legally speaking, the management of the schools in every essential respect is entirely within the control of the board. Teachers and scholars are governed by the reasonable rules and regulations adopted by the board. In the absence of a rule upon any special subject the action of a teacher is supposed to be in effect the act of the board until such action is set aside or disclaimed by an order of the board directing otherwise.

and aid in the enforcement of the same, and require the performance of duty by said persons not in conflict with law and said rules and regulations. [C.'73, §§ 1730, 1737; R., § 2037.]

SEC. **2773. Schoolhouse site—division of district—length of school.** It may fix the site for each schoolhouse, taking into

13. It is within the power of the board to require such reports from teachers as seem desirable for the information of the board. It may require reports weekly, monthly, by the term, by the year, or all of these together. It is the duty of teachers to comply with the regulations of the board, so far as it is within the power of the teachers to do so.

14. Each board has exclusive control of the schoolhouses in its district, unless the school township meeting has otherwise ordered.

SECTION 2773. 1. The power to locate sites for schoolhouses is vested, originally, exclusively in the board. This authority should be exercised with great care, and without prejudice. Decisions, 25 and 33.

2. The wishes of the people, for whom the house is designed, should be consulted as far as practicable, taking into account prospective as well as present convenience. Decisions, 17, 21 and 59.

3. A vote of the electors upon matters which by the law are to be determined by the board, is not binding upon the board, but is only suggestive to it. In such matters the board will still be left free to exercise the large discretion vested in it by the law.

4. The location of schoolhouse sites is an exclusive prerogative of the board. The electors may not definitely limit a board by vote or instructions.

5 A suggestion from the electors may be taken into account by the board and given such weight as there is value in the reasons upon which the expressed wish of the electors is based.

6. The board is required to exercise its official judgment in making the location best suited to the needs of all the people in the district. The bearing of the law is the same in all districts.

7. There is nothing in the law fixing a standard as to what is to be considered a reasonable distance for children to travel to school. Attendance in an adjoining district under such circumstances as to secure the payment of tuition to the adjoining district is governed by the provisions of section 2803.

8. There are many obvious reasons why a schoolhouse site should not be located away from the highway. It is highly desirable that the necessary highways to a new site should be open before a schoolhouse is placed upon such site.

9 The removal of a schoolhouse to another site within the same subdistrict is entirely within the control of the board, and a vote of either the electors of the subdistrict or of the school township will be only suggestive. 81 Iowa, 335.

10. A road to the schoolhouse may be established in the same manner and by the proceedings provided for the establishment of highways in general, and when the damages have been assessed, the district may pay the same.

11. The expense that is intended shall be paid by the district is not more than that of surveying, locating and establishing the highway. The building of bridges and the repair of the road with the funds of the district would not be warranted by the law.

12. After a highway has become legally established it is wholly and entirely under the control of the board of supervisors. Code, section 1482.

13. The location of a schoolhouse is not necessarily made to depend upon the boundaries of the subdistrict in which the house is located, as by the former law.

14. The removal of a schoolhouse from the subdistrict must be first ordered by the electors, at the township meeting. Decisions, 13.

consideration the geographical position, number and convenience of the scholars, provide for the fencing of schoolhouse sites, determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and

15. As a change of boundaries between subdistricts does not take effect until the subdistrict meeting in March, the board may not move the schoolhouse to accommodate the proposed new conditions, until after that time.

16. If possible, the district should own the sites. A perfect title should be secured, and the warranty deed recorded, before commencing to build.

17. The property should be conveyed to the district in its corporate name. The deed should be recorded and afterwards filed with the president. Form 28.

18. A public square may be transferred to an independent school district, for public school purposes. Code, sections 931-932.

19. In purchasing the grounds for schoolhouse purposes, the president should require an abstract of title and satisfy himself that the property is free from incumbrance.

20. The site should contain not less than one acre of ground, ordinarily, and this exclusive of highway.

21. The provisions of section 2814 do not apply when the site is purchased.

22. The law does not provide the number to be accommodated by a new house in order that one may be built.

23. There is nothing in law to prevent the erection of more than one schoolhouse in a subdistrict. 69 Iowa, 533. Decisions, 53.

24. The rights, privileges and obligations of the district as regards partition fences with adjoining property are the same as those of any other occupant.

25. The legal obligations of the district are the same as those of any other land owner, with regard to fencing. Sometimes a district desires to maintain a different or better fence than can be required of the party joining. In such cases it is quite customary for districts to build the whole fence.

26. A partition fence may be made tight by the party desiring it. Code, section 2367.

27. Any question upon which there is a difference of opinion between parties should be submitted to the township trustees, who act as fence viewers, and determine matters in controversy.

28. The property of school districts in cities and towns is not exempt from special taxation, for improvement of streets and laying of sidewalks. 55 Iowa, 150.

29. The district has the same right to the full and proper use of the schoolhouse property as any individual has of his property, or as any other corporation has of its property.

30. In an extreme case it may be necessary to bring an action in the name of the state before a peace officer against any person or persons wilfully or unlawfully persisting in trespassing upon the schoolhouse grounds or wilfully interfering with or disturbing the quiet and uninterrupted progress of a public school.

31. If any tramp or vagrant, without permission, enter any schoolhouse or other public building in the nighttime, when the same is not occupied by another or others having proper authority to be there, or, having entered the same in the daytime, remain in the same at night when not occupied as aforesaid, or at any time commit any nuisance, use, misuse, destroy or partially destroy any private or public property therein, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year. Code, section 4793.

32. The board should require from parties desiring to use the schoolhouse, security for its proper use and protection from other injury than natural wear.

designate the period each school shall be held beyond the time required by law. Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years, and each school regularly established shall continue for at least twenty-four weeks of five school days each, in each school year commencing the

33. It is proper to permit the use of schoolhouses for the purpose of public worship on Sunday, or for religious services, public lectures on moral or scientific subjects, or meetings on questions of public interest, on the evenings of the week, or at any time when such use will not interfere with the regular progress of the school. 35 Iowa, 194.

34. It is not in accordance with the meaning of the law and the decisions of the courts to allow a schoolhouse to be used for a purpose requiring an admission fee. This does not prevent a contribution being taken, but we think free admission should not be denied.

35. It is believed that no discrimination should be made as to who may attend meetings held in a schoolhouse. To make membership in a particular society a test for attendance upon the meeting would seem to be in conflict with the intention of the law.

36. The use of a public school building for Sabbath-schools, religious meetings, debating clubs, temperance meetings, and the like, is proper. Especially is this so where abundant provision is made for securing any damages which the taxpayer may suffer by reason of the use for the purposes named. The use of a schoolhouse for such purposes, when so authorized, is not prohibited by section 3, article 1, of the constitution. 50 Iowa, 11.

37. In precincts outside of cities and towns the election shall be, if practicable, held in the public school building, for the use of which there shall be no charge, but all damage to the building or furniture shall be paid by the county. Code, section 1113.

38. If any person wilfully write, make marks or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse or other public building, or on any furniture, apparatus or fixtures therein; or wilfully injure or deface the same, or any wall or fence inclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. Code, section 4802.

39. If any person wilfully disturb any assembly of persons met for religious worship by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship or so near as to disturb the order and solemnity of the assembly, or if any person wilfully disturb or interrupt any school, school meeting, teachers' institute, lyceum, literary society or other lawful assembly of persons, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. Section 4959.

40. There are no holidays during which teachers are exempted by the law from teaching, unless excused by the board. A legal contract requires twenty days of actual service for a month.

41. In this state, by common consent and universal custom, New Year's, Memorial Day, Fourth of July, Christmas, and any day recommended by the governor or the president as a day of thanksgiving, are observed as holidays.

42. It is the commendable custom with very many boards, to allow teachers and scholars the so-called holidays, and to pay the teachers as if those days had been taught.

43. There is no provision of law giving teachers time to visit other schools. Boards often grant teachers this privilege, under proper restrictions.

44. By consent of the board, an occasional Saturday may be taught. But as five days are a school week, the practice is not to be commended.

third Monday in March, unless the county superintendent shall authorize the board to shorten this period in any one or more schools, when in his judgment there are sufficient reasons for so doing. No school shall be in session during the time of holding a teachers' institute except by written permission of the county

45. If no action has been taken by the board and the contract contains no provision relating to the matter, the custom prevailing in that school will probably govern as to the matter of beginning and closing school sessions, intermissions, and other like particulars. It is well for the board and the teacher to have an agreement in matters of this kind.

46. While the written law does not specify the length of a school day, almost universal custom has made it six hours. The board has the power to shorten this time somewhat if thought best. If no action has been taken by the board, and a contract contains no provision relating to the matter, the custom prevailing in the district will probably govern.

47. It is within the power of the board to extend the hours of school, within reasonable limits, and when necessary it may maintain a night school. No person may receive pay from the funds of the district for giving instruction outside of the school hours fixed by the board nor for teaching without a certificate to teach the particular branch or branches in which instruction is given.

48 It is entirely within the discretion of the board to determine the number of months of school, the time when schools begin, the length of term, and such other questions

49. As regards the length of time during which schools are to be taught, twenty-four weeks is the minimum. The maximum is unlimited, except as by section 2806, limiting the amount of taxes for contingent and teachers' fund.

50. The regular schools of the district should be kept in session an equal number of months.

51. A suggestion or vote of the electors upon any of these matters will have no binding force upon the board, but such suggestions may be given such weight by the board as they choose to give them.

52. Attendance is not necessarily governed by subdistrict lines. The board may determine what school in the district children shall attend, without regard to the boundaries of subdistricts.

53. Subdistrict lines determine who may vote for director of the subdistrict, and also fix the limits of taxation, if the voters of a subdistrict vote a schoolhouse tax upon the subdistrict.

54. Usually and naturally in school townships the subdistrict will form a suitable division for attendance. But to determine where children shall attend, the board may fix other limits than subdistrict lines.

55. Poor children, when cared for at the poor-house, shall attend the district school for the district in which such house is situated, and a ratable proportion of the cost of the school, based upon the attendance of such poor children to the total number of days' attendance thereat, shall be paid by the county into the treasury of such school district, and charged as part of the expense of supporting the poor-house. Code, section 2249.

56. Unless the county superintendent finds it quite impracticable that a school should be held, and releases the board, it is required by law to continue a school regularly established.

57. If a board does not maintain a school and does not secure the release from the county superintendent, then any one legally interested may apply to a court for a writ to compel the board to perform its duty in the matter and to supply school privileges.

58 The board may establish more than one school when necessary for the accommodation of the children, subject to the limitations in section 2806.

superintendent. [19 G. A., ch. 172, § 21; 17 G. A., ch. 54; 15 G. A., ch. 57; C.'73, §§ 1724, 1727, 1769; R., §§ 2023, 2037.]

SEC. **2774. Renting room—instruction in other schools—transportation of children.** It may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse; and when the board is released from its obligation to maintain a school, or when children live at an unreasonable distance from their own school, the board may contract with boards of other school townships or independent districts for the instruction of children thus deprived of school advantages, in any school therein, and the cost thereof shall be paid from the teachers' fund. And when there will be a saving of expense, and children will also thereby secure increased advantages, it may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation, and such expenses shall be paid from the contingent fund. [21 G. A., ch. 124; 16 G. A., ch. 109; C.'73, § 1725.]

SEC. **2775. Instruction as to stimulants, narcotics and poisons.** It shall require all teachers to give and all scholars to receive instruction in physiology and hygiene, which study in every division of the subject shall include the effects upon the human system of alcoholic stimulants, narcotics and poisonous substances. The instruction in this branch shall of its kind be as direct and specific as that given in other essential branches, and each scholar shall

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59. The board has power to provide for a longer period of school than twenty-four weeks. An additional school in a rented room continues during such time as the board may determine.

60. Inequalities in the requirements may demand that varying prices should be paid as wages for different schools. Decisions, 24.

61. The school year for school purposes should be regarded as beginning on the third Monday in March, when a new board enters upon its duties. The year for the reports closes in September.

62. All the youth of the state from five to twenty-one years of age, irrespective of religion, race or nationality, are entitled to the same school facilities. While schools may be graded according to the proficiency of pupils, no discrimination, such for instance as requiring colored pupils to attend separate schools, can be enforced. 24 Iowa, 266.

SECTION 2774. 1. The board cannot provide an extra school for the accommodation of a less number than ten persons of school age. Decisions, 34.

2. From the action of the board with regard to an additional school, an appeal will lie.

3. If it is clearly shown to the county superintendent that the board abused its discretion in providing or in refusing to provide such a school, he may on appeal reverse its action, and do what the board might have done.

4. The board of scholars may not be paid by the district.

SECTION 2775. 1. This study must begin in the lowest primary class. In what grade or class it shall be completed is to be determined by the board.

2. Primary classes must be instructed orally, as the children are not old enough to use or comprehend a book. But this oral instruction must be outlined as a course, and adopted by each board.

3. The portion assigned to each grade or class should be thoroughly mastered before more advanced work is entered upon.

4. The work will be best accomplished with the older scholars by the use of a suitable text-book, which it is the duty of every board to select and adopt.

be required to complete the part of such study in his class or grade before being advanced to the next higher, and before being credited with having completed the study of the subject. [21 G. A., ch. 1.]

SEC. **2776. Higher schools—union schools.** It shall have power to maintain in each district one or more schools of a higher order, for the better instruction of all in the district prepared to pursue such a course of study, and it may establish graded or union schools and determine what branches shall be taught therein, but

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5. The board may forbid the use of tobacco on the school grounds.

6. Teachers should be careful to give instruction in accordance with the spirit of the law. The law contemplates that the noxious effects upon the system of the user of any of the articles named shall be taught.

7. Many other harmful effects, very properly emphasized in public lectures, are not required to be taught in the class room.

8. It is not out of place to emphasize the truth that total abstinence is the only sure way to escape the evils arising from the use of alcoholic drinks and tobacco.

9. The alarming increase of the cigarette habit calls for united and aggressive action in removing from the growing boy as far as we can possibly do so, the temptation and opportunity to purchase tobacco. In this way value will be added to the instruction required to be given in all public schools as to the effects of narcotics.

10 We urge upon all teachers to co-operate with the authorities and with all other persons in creating and fostering a sentiment favoring a rigid enforcement of the law regarding the sale or giving of tobacco to boys. Code, section 5005.

11 Every scholar must study physiology and hygiene, including the effects of stimulants and narcotics, until the outline upon that branch, as prepared by the board, has been completed.

12. The law does not mean that a scholar must necessarily study this branch continuously during his entire school life, unless the course of study adopted by the board so provides.

13. A board cannot shift the responsibility by simply providing that teachers shall give instruction in this branch. It must see to it that the work is actually done by the teachers, as the law requires.

14. To teach a special branch, a person may receive a certificate for that study only, and is not required also to be examined as provided for teachers in general. Section 2736.

15. County superintendents should know that every teacher is complying fully with this statute, and any teacher failing or refusing to teach as required, may not be permitted to continue in the work of teaching. Section 2737.

16. The proper remedy to secure an enforcement of these provisions, as of other mandatory requirements, is application to a court of law for a writ of mandamus. Code, section 4341.

SECTION 2776. 1. With its power to establish and maintain graded schools, every board is invested with authority to prescribe a course of study in the different branches to be taught.

2. A graded school, open to the older and more advanced scholars, may be advantageously established at some central point in the district.

3. It is very desirable that boards, county superintendent, and teachers should work together in efforts to classify and harmonize the work to be done in the ungraded schools. Much may be accomplished by concert of action in carrying forward some uniform method of classification and instruction.

4. The electors may not limit or restrict the board to the adoption of a course of study including only such branches as the electors may name. Nor may the electors direct that a particular branch, or certain studies, shall not be taught.

the course of study shall be subject to the approval of the superintendent of public instruction; and it may select a person who shall have general supervision of the schools in any district subject to the control of the board. [C. '73, § 1726; R., § 2037.]

SEC. **2777. Kindergarten department.** The board may establish within any independent school district, in connection with the common schools, kindergarten departments for the instruction of children, to be paid for in the same manner as other grades and departments. Any teacher in kindergartens shall hold a certificate from the county superintendent certifying that the holder thereof has been examined upon kindergarten principles and methods, and is qualified to teach in kindergartens. [26 G. A., ch. 38.]

SEC. **2778. Contracts—election of teachers.** The board shall carry into effect any instruction from the annual meeting upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers

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It is the province of the board to decide what branches besides those named by the electors, shall be included in the course of study and taught in the schools.

5. The best use of the term graded or union school is that referring to a group of different schools or rooms containing scholars of varying ages and attainments, but divided by rooms and classes into the sections in which each may do the best work and gain for himself the greatest good.

SECTION 2777. It may well be doubted whether the board in any district may provide for the instruction of children below the minimum school age. The constitution of the state does not seem to contemplate that public money shall be used to provide schooling for any below five years of age.

SECTION 2778. 1. The law requires the board to make all contracts necessary to carry out any vote of the district, and the president to sign all contracts made by the board. Section 2759.

2. It is the duty of the board to make contracts for the erection of schoolhouses, when the means have been provided by the electors.

3. The electors frequently assume to exercise powers not granted them by the law. They have only such powers as are specifically named in the law.

4. Boards should not involve the district in an indebtedness for the erection of schoolhouses by contracts and the issue of orders to exceed the amount voted by the electors, or of available schoolhouse funds.

5. School townships have no authority to issue bonds or other evidences of indebtedness for the purpose of borrowing money.

6. Unappropriated schoolhouse funds may be disposed of by the electors, under section 2749, for improvements, such as fencing schoolhouse sites, providing wells, etc , or the same may be transferred to either the teachers' or contingent fund, and the board is required to carry out the vote of the electors.

7. Any unappropriated schoolhouse fund in the district treasury may be used for the erection or repair of schoolhouses, at the discretion of the board, without action of the electors.

8. A lightning rod may be supplied as a part of a new house, and paid for from the schoolhouse fund. 51 Iowa, 432.

9. The board may anticipate the levy and collection of schoolhouse taxes already voted, and issue orders to build as directed by the electors. 51 Iowa, 102.

10. A vote may be rescinded, if matters have not become involved making such reconsideration impossible, such as the acceptance of a contract under the vote in question, or the filing of an appeal.

11. All teachers must be selected by the board and the responsibility of choosing teachers may not be transferred to persons outside the board.

granted and performing the duties required by law. Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five school days or month of four weeks, and such other matters as may be

12. If a director desires to teach the school in his own subdistrict, he should resign as director.

13. Ordinarily the board should make contracts only for the year during which it serves.

14. Contracts for teaching may be made by the board to extend beyond the year, if the contracts are made in good faith and not for the purpose of forestalling the action of its successors.

15. While instances may occur in which the interests of the district will be subserved by making contracts with teachers and others, which will not expire for months after a change of officers, courtesy as well as justice, dictates the impropriety of making contracts the execution of which will embarrass successors in office.

16. While we may not give any opinion upon a question involving the validity of a contract, we advise that boards of directors do not make contracts with teachers for a longer term than a single year.

17. The board should grant a compensation to be paid the teacher according to the circumstances and requirements of each school.

18. Contracts must, in all cases, be made according to the instructions and directions of the board, and after being made they should be reviewed by the board before any work is done.

19. The teacher is entitled to a copy of the contract. This copy should be signed by the president, and in all other respects should be a duplicate of the original contract.

20. A board may not question nor discredit in any manner a valid certificate held by a teacher, but any board may require an additional examination or demand proof of special attainments desired by it before engaging a teacher.

21. If the board adds extra branches to the course of study and expects them to be taught, then the person desiring to contract as teacher must first secure from the county superintendent a certificate for each of such additional branches.

22. To the branches directed by the electors to be taught, the board of any district may add such other branches as it deems best to have taught. But before attempting to give instruction in any branch the teacher must have a certificate to teach such branch.

23. It is the duty of our school authorities to provide for schools having non-English speaking scholars, the best instruction available, in order that all the children may acquire rapidly a correct use of English, and become acquainted as soon as possible, with the spirit and genius of our American institutions.

24. A court will be likely to hold that an oral agreement with a teacher is a verbal contract, and that either of the parties may be compelled subsequently to execute the written instrument.

25. A court will be likely to hold that a contract to teach made with a member of the board is in violation of law, contrary to public policy, and void.

26. There is no direct provision of law to prevent the hiring of a relative or connection of a member of the board as teacher.

27. A contract violating the terms of the law is wholly illegal and void, unless indeed the persons signing such contract expect to be held personally for its performance. 37 Iowa, 314.

28. The law provides the manner in which a teacher may be discharged, and the parties to the contract may not attempt to provide any other method of terminating the contract. 82 Iowa, 686.

agreed upon, signed by the president and teacher, and filed with the secretary before the teacher commences to teach under such contract. [22 G. A., ch. 60; C.'73, §§ 1723, 1757; R., §§ 2037, 2055.]

SEC. **2779. Erection or repair of schoolhouse.** It shall not erect a schoolhouse without first consulting with the county superintendent as to the most approved plan for such building and securing his approval of the plan submitted, nor shall any schoolhouse be erected or repaired at a cost exceeding three hundred dollars save under an express contract reduced to writing, and upon proposals therefor, invited by advertisement for four weeks in some newspaper published in the county in which the work is to be done,

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29. Any person interested in having a verbal contract carried into execution may apply to a court for a writ of mandamus to compel the signing of the written contract. In this way all matters in controversy will be brought before a court in such a manner as to secure a speedy and conclusive determination of the different questions involved.

30. All matters agreed upon should be incorporated into the written contract. The tendency of our courts is to presume that the written contract embraces the entire agreement of the parties. 52 Iowa, 130.

31. Without special mention in the teacher's contract, it is understood that only the usual common branches and those included in the course of study for the school, are expected to be taught.

32. The president should require the teacher to produce the certificate, which he should carefully examine before signing the contract.

33. If it is desired that branches additional to those included in the certificate had by the teacher shall be taught, such fact should be mentioned as a part of the contract, and the teacher is required to have the certificate for such additional branch or branches, before beginning to teach.

SECTION 2779. 1. Before making a contract great pains should be taken to obtain the best possible plan for the building. On this point the law requires consultation with the county superintendent. The written approval of the plan by the county superintendent should be secured.

2. Contracts for the erection or repair of schoolhouses, or for material for the same, exceeding $300, cannot be entered into until proposals have been published at least twenty-eight days. Repairs include furniture.

3. After the contract is executed, it should be changed with caution, or the sureties may be released. 50 Iowa, 98.

4. Contracts made in violation of the terms of this section are illegal. Their fulfillment may be prevented by injunction.

5. The local board of health has undoubted right to condemn and close for use as a schoolhouse a building unfit for such purpose. Section 2568.

6. The district may not form a partnership in building a schoolhouse. But this does not prevent receiving donations and granting privileges.

7. District property is exempt from general taxation, from execution, from garnishment, and from mechanic's lien.

8. A schoolhouse, being public property, is not subject to execution and therefore is not subject to a mechanic's lien. 51 Iowa, 70.

9 A school township may not issue bonds to build. When a schoolhouse tax has been voted, the board may anticipate its levy and collection and issue orders to build. Such orders may not bear a higher rate of interest than six per cent. 50 Iowa, 102. Note 9 to section 2778.

10. In building a schoolhouse, it is important to secure plans of the building, with full specifications as to its dimensions, style of architecture, number and size of windows and doors, quality of materials to be used, what kind of roof, number of coats of paint, of what material the foundation shall be constructed, its depth

and the contract shall be let to the lowest responsible bidder, bonds with sureties for the faithful performance of the contract being required, but the board may reject any and all bids and advertise fo new ones. [C. '73, § 1723; R., § 2037.]

SEC. **2780. Allowance of claims—settlements—compensation of officers.** It shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed; it shall from time to time examine the accounts of the treasurer and make settlements with him; shall present at each regular meeting of the electors a full statement of the receipts had and expenditures made since the

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below and its height above the surface of the ground, the number and style of chimneys and flues, the provisions for ventilation, the number of coats of plastering and style of finish, and all other items in detail that may be deemed necessary. The plans and specifications should be attached to the contract, and the whole filed with the secretary.

11. When a schoolhouse is built or repaired under contract, the board should not neglect to examine the work carefully in order to determine that the contract has been fully complied with, before it directs the payment of money.

12. The aggregate amount to which the sureties are required to qualify is double the amount of the bond required. Code, section 358.

13. As a rule it is unsuitable for a member of the board to become a surety for an officer of the board, or to appear as surety upon any other bond which is to receive the approval of the board.

14. The board is sole judge as to what constitutes the lowest responsible bidder. If the contract is regular in other respects, a court would not be likely to interfere, although lower bids in amount were offered, and rejected by the board.

15. In case of failure to close the contract with the bid accepted under an advertisement, if it is desired to make a new attempt to contract, it will be necessary to advertise anew for bids.

SECTION 2780. 1. It is the duty of the board to examine all contracts for the employment of teachers, the construction of schoolhouses, or for any other purpose, and to see that the stipulations have been complied with, before directing the payment of money thereon.

2. If the board audits a claim and directs orders drawn, the officers of the board will be warranted in following the direction of the board, unless it is clearly manifest that an attempt is being made to violate a plain provision of law. The responsibility in such a case rests very largely with the board.

3. This section contemplates that a full report of the affairs of the district shall be made by the board at each annual meeting of the electors. This work appropriately devolves upon the secretary, unless the board designates otherwise. When practicable the report may be published in a newspaper

4. An order issued on a claim which has not been audited and allowed is void. 39 Iowa, 490.

5. Only the secretary and the treasurer may receive compensation for the discharge of duties required by law.

6 The evident conclusion derived is that no member of the board may legally receive pay out of the funds of the district for any work done for the district in any capacity whatever.

7. A court would be likely to hold a contract made with a member of the board, to be in violation of the law, contrary to public policy, and void.

8. To pay any member of the board for the performance of official duties, is in direct opposition to the law, and an open violation of the oath of office. For locating sites, receiving buildings on the completion of contracts, or for any other official duty, a member clearly cannot receive pay.

preceding meeting, with such other information as may be considered important; and shall fix the compensation to be paid the secretary and treasurer. But no member of the board shall receive compensation for official services. [C.'73, §§ 1732–3, 1738, 1813; R., §§ 2037–8; C.'51, §§ 1146, 1149.]

SEC. **2781. Financial statement.** It shall publish in each independent city or town district two weeks before the annual school election, by one insertion in one or more newspapers, if any are published in such district, or by posting up in writing in not less than three conspicuous places in the district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes for the year preceding such annual election. And the said board of directors shall also at the same time publish in detail an estimate of the several amounts which, in the judgment of such board, are necessary to maintain the schools in such district for the next succeeding school year. [C.'73, §§ 1734–5, 1756; R., §§ 2037, 2054; C.'51, § 1147.]

SEC. **2782. Visiting schools—regulations—discharge of teacher—expulsion of scholar.** It shall provide for visiting the schools of the district by one or more of its members and aid the

9. If such a person desires to secure pay from the district there seems to be no other way than for him to refuse to become a member of the board, or if a member, to resign from the board.

10. It is not within the power of the electors to vote compensation or remuneration of any kind, to the members of the board or to officers of the board, for their official services. Nor may the board vote compensation to any member.

11. The official trust of a member of the board may not be delegated. It is apparent that as there is no way in which a member may receive compensation for discharging official duties, he may not contract with another person to be paid from the district funds for performing the same services, as a substitute for the member of the board.

SECTION 2781. 1. This statement should show the total receipts and expenditures for each fund, followed by an estimate of the amount required for each fund, to maintain the schools for the ensuing year.

2. The detailed and specific statement of the receipts and disbursements of all funds expended, should be sufficiently itemized to show the amount received from each separate source, also the amount expended for each particular purpose.

3. This statement is for the information of the electors, but they should not vote upon the amount of tax to be levied for contingent and teachers' fund, as these matters are determined by the board. Section 2806.

4. The board must have the statement published at least once in a newspaper, if one is printed in the district.

5. The fee for printing the statement is fixed by law. Code, section 1293.

6. In preparing the annual statement for publication, minute details of all the items need not be given. This would render it uselessly troublesome to prepare, and expensive to publish. Such general results and classified items as will enable the electors fully to comprehend the proceedings of the board, are all that the law requires. The statistics of the school may be added if the board thinks proper, but the law does not require it.

SECTION 2782. 1. A conscientious compliance with the requirements regarding visitation would greatly increase the efficiency of the schools. There are very many things that may be best ascertained by visiting the school, inspecting the work of the pupils, and conversing with the teacher. The teacher can accomplish the best results only when he is sure of hearty co-operation and support.

teachers in the government thereof, and enforcing the rules and regulations of the board. It may, by a majority vote, discharge any teacher for incompetency, inattention to duty, partiality, or any good cause,

2. Boards have entire control over the public schools of their district and the teachers employed therein.

3. Rules and regulations governing teachers and scholars may be adopted and enforced by the board, as the best interests of the schools may seem to require. Decisions, 15 and 32.

4. The force and effect of any motion adopted by the board does not terminate with a change of officers or members, but remains in force until repealed. 35 Iowa, 361.

5. The teacher is the agent of the board, and rules made by him and enforced with either formal or tacit consent, are in effect the rules of the board.

6. If it is understood that the principal of a school has charge of other rooms besides his own, he has the same power in managing the children that is by law given to other teachers.

7. The privilege of free instruction in the public schools is one conferred by legislative enactment, under constitutional direction, and the privilege is subject to legislative regulation. The right to attend school is not absolute, but is conditional upon compliance with the rules and the essential conditions.

8. At present the element of compulsion as regards attendance at school is not strong in our law. However, our courts hold that a board has power to require such a reasonable attendance in regularity as will not interfere with the progress of the school. 31 Iowa, 562 and 50 Iowa, 145.

9. The board may prescribe a course of study and determine in connection with that course of study the time during the year in which certain specified branches shall be pursued. This is a necessity in order to an economical division of labor on the part of the teaching force, particularly in a large school.

10. The parent cannot expect that a class shall be formed whenever asked for at any time in the school year, for the special accommodation of one or more to the disadvantage of the many and to the detriment of the school.

11. It is quite necessary to carry out carefully a close plan of classification and instruction, and to provide what time in the year certain classes shall begin the study of the branches to be taught during that portion of the year.

12. A condition may exist when for a short time a board may be compelled to provide by regulation that certain pupils shall attend only one-half of the day, and others of the same grade the other half. But such arrangement could not be regarded as a permanent one.

13. If a board attempts to do the very best it can within the law to overcome the inconveniences surrounding it, leaving nothing undone which it might properly be expected to do, it is discharging the duty incumbent upon it to provide equal school facilities for all.

14. It is within the power of a board to require the study of the common branches, or of other elementary studies that are in the course of study adopted by the board, before advancing the scholar to other more difficult subjects.

15. Scholars not able to carry the work of the classes being taught may yet be allowed to attend the school and get what good they may from listening to the work which is being done. In this way a child would not be absolutely excluded from the school privileges guaranteed to him by the law.

16. If a child becomes the source of undue annoyance to others, although through no fault of his own, he may, if absolutely necessary for the good of the school, be forbidden attendance. 31 Iowa, 562, top of page 569. Note 58, below.

after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor.

17. On the other hand the spirit of our laws does not support an interference with personal or individual rights except when such control or restriction may become absolutely necessary in order to protect others in the enjoyment of the rights guaranteed to them by the law. The true idea is to bring all of school age within the salutary influence of the school and to keep them there if possible.

18. Undoubtedly the parent and teacher have joint control over the scholar on his way to and from school. Unless the parent claims and exercises supreme authority over the child, the board has control of him on the way between the school and his home. It may thus often become possible for the scholar to come within the control of the board as soon as he leaves home for school and continue within such control until he again reaches the home of the parent. It is very desirable that co-operation and a mutual desire to promote the best good of the scholar should be sought by the parents and the school authorities.

19. It is the duty of the teacher, under the direction of the board, to determine what branches can best be pursued by each scholar.

20. Without special mention in the teacher's contract, it is understood that only the usual common branches and those included in the course of study for the school are expected to be taught.

21. If it is desired that higher arithmetic, or any other advanced study, shall be taught in one or more schools in the district, the board should include such branch in the course of study for such school or schools.

22. It is not within the province of individual persons to demand instruction outside the branches usually taught.

23. Every scholar must study physiology and hygiene, including the effects of stimulants and narcotics, until the outline upon that branch, as prepared by the board, has been completed. Note 12 to section 2775.

24. It becomes the duty of every teacher to follow the plan of work indicated in the course of study. When difficulties are met, if no other person has general supervision, the matter may be brought to the attention of the board.

25. As regards classification, the board has absolute control. But as the teacher is by common consent presumed to know what will be best for all, custom has left to him the making of the program and the placing of scholars in the proper classes. In doing this, however, he acts for the board, and any complaint should not be made to the teacher, but to the board.

26. If a scholar is found to be so deficient in the common branches that he is unable to take the work in a class more advanced, without detriment to the class and to himself, it is plain that he may be classified in each branch where he is likely to receive the greatest good. The penalty for not pursuing a suitable course of study will be found in the fact that such scholars may be denied promotion, and may not be allowed to graduate.

27. In connection with the course of study, the board should designate the teaching helps and apparatus to be used, and should also arrange to furnish such appliances as soon as they are needed.

28. The teacher may be held responsible for the efficient discharge of every duty properly attached to his office, including the exercise of due diligence in the oversight and preservation of school buildings, grounds, furniture, apparatus, and other school property, as well as the more prominent work of instruction and government.

29. Parties doing damage to school property are responsible for the same. The teacher is bound to exercise reasonable care to protect and preserve school property, and failing to do so may be held liable for damages.

It may by a majority vote expel any scholar from school for immorality or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental

30. If the rules and regulations of the board do not provide otherwise the teacher has the right in proper cases to inflict corporal punishment upon refractory scholars. In the proper exercise of his authority, to maintain good order, and to require of all the scholars a faithful performance of their duties, the teacher is entitled to the support and co-operation of the board.

31. In the choice of a kind of punishment and in the selection of an instrument, as well as in determining the degree of punishment to be administered, the teacher must exercise a sound discretion.

32. Corporal punishment is best reserved as a last resort and should be used only when it is believed that no other gentler measure will secure the reformation of the offender. Dismissal from school by the proper authority is a still more extreme remedy than corporal punishment.

33. It is the duty of the board to see that schoolhouses are kept in repair, clean, and in good order for school use. Neither the teacher nor the scholars should be expected to scrub or wash out the schoolhouse. The light sweeping of daily use is often done by them on their own motion, but this cannot be required of the scholars, nor of the teacher unless she contracts to take special care of the house in such respects.

34. A board should have a house cleaned as frequently as the house needs such attention in order to keep it in good order for school use. No member of the board may receive pay for such work, but any other person may be paid from the contingent fund.

35. The law does not contemplate that janitor work shall be done by the scholars and neither the teacher nor the board may require that a scholar shall bring fuel into the school room. If a scholar has made unnecessary litter in the school room or about his seat he may be required as a punishment to sweep up the same. But this is quite another matter than doing the ordinary janitor work.

36. Making fires and sweeping the school room are not, properly, a part of the teacher's duties. In rural districts teachers frequently perform this labor as a matter of convenience and economy. Those unwilling to do this work, or who expect to receive pay for it, should so stipulate when entering into the contract to teach. Section 2778. Decisions, 26.

37. The board, for what seem good reasons, may order a short vacation. But the term included in the contract cannot be shortened, without the consent of both parties. Note 52, below.

38 It is lawful for a board to give teachers holidays and not deduct pay, and quite usual. The teacher, however, may not claim it as a right.

39. If a teacher is at the schoolhouse at the proper time, and remains during school hours, he is entitled to pay therefor, according to his contract, whether scholars are present or not

40. As a rule it is highly undesirable to close a school on account of an epidemic. But if the local board of health, or the board of directors, closes a school on account of the presence of a contagious disease, or for like reason, the teacher is entitled to pay upon his contract.

41. When a school is closed for a short time, for causes beyond the control of the teacher, the courts will be likely to hold that the teacher is entitled to his pay according to the terms of his contract. Such cases are best settled by compromise between the parties.

42. If the schoolhouse is destroyed, or the school is closed indefinitely by causes beyond the control of either party to the contract, the teacher being ready to comply with his part, can collect pay according to contract. If said teacher

to the best interests of the school, and it may confer upon any teacher, principal or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writ-

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uses proper diligence to secure employment at something which he can do, and secures such employment, the district will pay him the difference between the amount received in his new work and the amount of his wages under the contract. In other words, his actual loss should be made good.

43. Teachers are entitled to the support and co-operation of the board. It is alike due to the dignity of the board and the rights of the teacher that no one should be discharged except after thorough investigation and the clearest proof. If possible the teacher should be shielded from the stigma of discharge.

44. In the trial of a teacher, when it is sought to dismiss him, all the provisions of law must be strictly complied with. The board must allow the teacher to make a full defense, and the teacher may appear by attorney, or otherwise, as he chooses.

45 Boards may dismiss teachers only for good cause shown. In case the board passes an order to dismiss, the material reason therefor should be spread upon the record, for, while in case of contest, these reasons would not be conclusive against the teacher, the board would be estopped from presenting other reasons than those named in the record.

46. When a teacher is unjustly dismissed, an appeal may be taken from the action of the board in dismissing him, but a suit at law must be brought, if he seeks to recover his pay upon the contract The teacher should be paid only to the date of legal dismissal. 53 Iowa, 585 69 Northwestern Reporter, 419

47. The order of the board discharging or refusing to discharge a teacher is more largely a discretionary than a judicial act. In this, as in other matters, the very large discretionary powers of the board must be respected, and on appeal their conclusion may not be questioned without the most convincing testimony.

48. The contract with a teacher may be terminated by discharge after the investigation provided for in this section, by revocation of certificate, by compromise, or by default of either party.

49. By universal consent, and certainly by the spirit of our school law, it is expected of teachers that they refrain from improper language, keep the Sabbath day with respect, and in every other way avoid practices or company that are demoralizing in their tendencies.

50. This section provides the only manner in which a teacher may be discharged, and the parties to the contract should not attempt to provide any other method of terminating the contract. A discharge by any other method is wrongful. 82 Iowa, 686.

51. The certificate being in the nature of a commission cannot be attacked collaterally.

52. The obligations between the parties to a contract to teach are reciprocal. A teacher would have good cause to complain if a board desired to remove her because it had an opportunity to secure a better teacher. Yet in such a case if an agreement could be made annulling the contract, such arrangement would be legal. But the teacher may insist that the board keep its part of the contract in the same spirit that she intends to keep hers. It would seem to be the same if it is the teacher who desires to have the contract annulled.

53. The regulations of the state board of health require every person entering any public school to give satisfactory evidence of protection by vaccination. Local boards of health have the power to require protection in all schools, and of all children, or even all persons within their jurisdiction. It is well established that schools are among the most prolific sources of the spread of contagious diseases.

ing to the president of the board. When a scholar is dismissed by the teacher, principal or superintendent, as above provided, he may be re-admitted by such teacher, principal or superintendent, but

54. The board should exclude children coming from houses where there are contagious diseases, and should enforce the rule that children not vaccinated shall not be admitted until they conform to the regulation demanding such protection.

55. The board has full control in all matters relating to the government and welfare of the schools. A scholar subject to fits or spasms may be excluded from school by the majority of the board if the presence of such scholar is thought to interfere materially with the progress of the school. Any one aggrieved with the exclusion of such scholar has the speedy remedy of application to a court for his reinstatement. Note 16 to section 2782.

56. It is the duty of every board of directors to co-operate with the local board of health in encouraging the vaccination of all school children not already protected by vaccination. The board of directors may not compel vaccination, but the majority vote of the board will exclude from the schools any who will not comply with such reasonable rule of the board of health.

57. The board will be justified in refusing to permit the attendance of a child whose parent will not consent that the scholar shall obey the rules of the school. 31 Iowa, 562 and 50 Iowa, 145.

58. The right to attend school is not absolute, but is conditional upon compliance with the rules and the essential conditions.

59. A board may not adopt a rule which will deprive a child of school privileges, except as a punishment for breach of discipline or an offense against good morals. 56 Iowa, 476.

60. Any rule of the school, not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper. 31 Iowa, 562.

61. It is competent for boards to provide by rules that pupils may be suspended from the schools in case they shall be absent or tardy a certain number of times within a fixed period, except for sickness or other unavoidable cause. 31 Iowa, 562.

62. The parent has no right to interfere with the order or progress of the school by detaining his child at home, or by sending him at times that prove an annoyance or hindrance to others. 31 Iowa, 562.

63. If the effects of acts done out of school hours reach within the school room during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. 31 Iowa, 562.

64. We believe our courts will sustain boards in recognizing flagrant offenses having a direct and immediate tendency to injure the school, to bring contempt upon the teacher, or to subvert the authority of the board, even though such offenses may be committed away from the school grounds, and out of school hours. And if boards find it necessary in their opinion, to adopt and enforce reasonable regulations in such cases, we believe their action will not be interfered with.

65. The law does not provide that the board is compelled to give scholar or parents notice or chance for defense, before ordering suspension or expulsion of the scholar. The board has large discretionary powers. This is one of the matters wholly within its discretion. But it would be well for the board carefully to investigate the charges, before dismissing any scholar. Decisions, 32.

66. For good cause, a teacher may suspend without fixing the time, notice being also at once given to the board.

67. Suspension is the separation of the scholar from the school for a limited time, and it may be either for bad conduct, for unnecessary absence, or as a sanitary measure.

when expelled by the board he may be re-admitted only by the board or in the manner prescribed by it. [Same.]

SEC. **2783. Use of contingent fund—free text-books.** It may provide and pay out of the contingent fund to insure school property such sum as may be necessary, and may purchase diction-

68. The period of time fixed by the board during which suspension or expulsion shall be in force, should be clearly indicated in the vote of the majority of the board, as spread upon the records. Conditions upon which earlier readmission is provided for, may very properly be given in the same connection.

69. The true idea is to bring all within the salutary influence of the school, and to drive none out, but cases sometimes occur in which it becomes necessary for the board to protect the rights of the many by excluding a scholar whose presence and example are a constant menace to the successful progress of the school.

70. The teacher has control over scholars during school hours, unless restricted by a rule of the board. He may require a scholar to remain in his seat during recess as a punishment. However, it is not wise to deprive children, to any great extent, of the exercise necessary to their physical well-being.

71. The board has as full control over scholars during recess as at other times within the school hours fixed by the board.

72. A teacher may not detain a scholar after school hours, against the wish of the parent. It is the presumption that the parent is entitled to the assistance and company of the child, except during the time said child is actually within the control of the school authorities for the purposes of instruction.

73. Teachers should exercise watchful care and oversight as regards the conduct and habits of their scholars, not only during school hours, recesses and intermissions, but also within reasonable limits while they are coming to and returning home from school.

74. For good cause, a teacher may excuse a scholar from school work without fixing the time, and require him to leave the school premises, notice being also at once given to the director or to the president of the board.

75. The teacher is responsible for the discipline of his school, and for the progress and deportment of his scholars. It is his imperative duty to maintain good order and require of all a faithful performance of their duties. If he fails to do so he is unfit for his position. To enable him to discharge these duties effectually, he must necessarily have the power to enforce prompt obedience to his requests. For this reason the law gives him the power, in proper cases, to inflict punishment upon refractory scholars. Decisions, 15.

76. In applying correction, the teacher must exercise sound discretion and judgment, and should choose a kind of punishment adapted not only to the offense, but to the offender. Corporal punishment is a severe remedy, and its use should be reserved for the baser faults. Decisions, 14.

77. In 50 Iowa, 145, the suggestion is made that expulsion by the board rather than severe corporal punishment by the teacher, is a good remedy in case of repeated and continuous violation of the rules.

78. In the school as in the family there exists on the part of the children the obligation of obedience to lawful commands, subordination, civil deportment, respect for the rights of others, and fidelity to duty. These obligations are inherent in any proper school system, and constitute the common law of the school. Every scholar is presumed to know this law, and be subject to it, whether it has or has not been by the board placed in the form of written rules and regulations.

SECTION 2783. 1. This section confers upon all boards the right to insure property. This duty should not be neglected.

2. Purchases of records, dictionaries, apparatus, and similar supplies for the use of the district may not be made by contract under section 2824, but all such articles will be bought under this section. Note 4 to section 2824.

aries, library books, maps, charts and apparatus for the use of the schools thereof to an amount not exceeding twenty-five dollars in any one year for each school room under its charge; and may furnish school books to indigent children when they are likely to be deprived of the proper benefits of school unless so aided; and shall, when directed by a vote of the district, purchase and loan books to scholars, and shall provide by levy of contingent fund therefor. [26 G. A., ch. 37; 25 G. A., ch. 34; 21 G. A., ch. 107; 19 G. A., ch. 149, § 1; C.'73, § 1729.]

SEC. **2784. Water-closets.** It shall give special attention to the matter of convenient water-closets or privies, and provide on every schoolhouse site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the schoolhouse, and as far from each other as may be, and keep them in wholesome condition and good repair. In independent city or town districts, where it is inconvenient or undesirable to erect two separate outhouses, several closets may be included

3. Secure provision should be made by the board for the usual necessary contingent expenses of the schools during the year, before contingent fund is taken to purchase any of the articles named in this section. Section 2768.

4. There can be no doubt that one of the purposes of the school is to teach patriotism to the children. The board may use available contingent funds to purchase a flag to be used as apparatus in the school room, on the school building, or upon the school grounds.

5. A purchase of apparatus made with the consent of the board when not in session, is a direct violation of the law. A member of the board who does not wish to become implicated in a transaction discreditable to the board and unprofitable to the district should refuse his consent to such an agreement.

6. Members of boards giving orders for apparatus in their individual capacity assume personal responsibility and may thus render themselves liable for payment as individuals.

7. The members of a school board cannot, by a prearrangement or contract entered into when not in session, bind themselves afterwards to ratify or confirm contract or engagement thus entered into. The distinction here is that while a board, in session, may ratify a contract made out of session, the members cannot individually bind themselves to do so

8. These provisions afford all districts the opportunity to supply free books, so that every child may continuously enjoy the privileges of school. It is believed that if districts will take action in accordance with the spirit of the law, the percentage of attendance at school can be materially increased, and the usefulness of our schools to all the children, greatly enhanced.

9. Much of the success of free text-books will depend upon the rules and regulations adopted by the board to govern the use and care of such books. The board should take more than the usual pains to adopt plain, comprehensive, and effective rules for the guidance of all concerned.

SECTION 2784. 1. This provision of the law requiring it to take special pains with regard to outbuildings is mandatory upon every board. A director may not refuse to carry into effect instructions from the board with regard to such a matter And a board refusing to give attention to the subject risks a censure from a court if its failure or refusal to provide proper facilities as regards privies or water-closets is brought to the attention of a court Section 2822.

2 The last part of the section means that when separate water-closets out of doors are included under one roof, then the fence to separate the approaches shall be built in the form directed When outhouses are distinct and at a distance from each other, the law does not require the fence to be built.

under one roof, and if outside the schoolhouse each shall be separated from the other by a brick wall, double partition, or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length. [25 G. A., ch. 3.]

SEC. **2785. Duties of director—contracts.** The board of directors of a school township may authorize the director of each subdistrict, subject to its regulations, to make contracts for the purchase of fuel, the repairing or furnishing of schoolhouses, and all other matters necessary for the convenience and prosperity of the schools in his subdistrict. Such contracts shall be binding upon the school township only when approved by the president of the board, and must be reported to the board. Each director shall, between the first and tenth days of September in each year, prepare a list of the heads of families in his subdistrict, the number and sex of all

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3. Every teacher worthy of the name will see to it that this law is observed in its spirit, and will call the attention of the board to any necessity for special action on its part. In country districts it is highly desirable that the teacher should carry the keys to the outbuildings, and should bestow no less of watchful care upon them than is given to the schoolhouse itself

4. If any person wilfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, court house or other public building, or on any furniture, apparatus or fixtures therein; or wilfully injure or deface the same, or any wall or fence inclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days. Code, section 4802.

5. Very much depends upon teachers to determine the manner in which this law is observed A listless indifference, a half-hearted activity, a want of confidence, will defeat the purpose of the law for the time at least. Serious consideration, a high-minded approbation of its intention, a courageous insistence upon its observance, together with untiring attention and frequent inspection, will make the law a continued success No conscientious teacher will be irresolute, when the immeasurable interests involved are regarded.

6. Teachers should not hesitate to bring the case of persistent offenders to the attention of the board. As a last resort it may become necessary for the board to invoke the assistance of the peace officers. It sometimes happens that nothing less than the strong arm of the civil authorities is able to compel a respect for law, and a decent regard for the rights of others. No community may justly claim to be a moral people, and knowingly fail to guard and preserve the purity, the morals, and the health, of its children and youth.

SECTION 2785. 1. It is a general statement that nearly all the powers of the director are to be exercised under the regulations of the board. Any person about to contract is bound to know what restrictions have been made, and should be governed accordingly.

2. The director is clothed with certain general powers by this section, but these are to be exercised under the direction of the board. The board must instruct him, for example, as to the extent of repairs, and prices paid for same, and the amount and cost of fuel.

3. School officers are possessed of specially defined powers and should attempt to exercise no others, except such as arise by fair implication from those granted.

4. No director has authority to make a contract in behalf of the school township, except under specific instructions of the board.

5. All contracts made by the director must be approved by the president and reported to the board.

children of school age, and by the fifteenth day of said month report this list to the secretary of the school township, who shall make full record thereof. The powers specified in this section cannot be exercised by individual directors of independent districts. [C.'73, §§ 1753–5; R., §§ 2052–3; C.'51, §§ 1124, 1142.]

SEC. **2786. Industrial exposition.** The board of any school corporation or the director of any subdistrict deeming it expedient may, under the direction of the county superintendent, hold and maintain an industrial exposition in connection with the schools of such district, such exposition to consist in the exhibit of useful articles invented, made or raised by the pupils, by sample or otherwise, in any of the departments of mechanics, manufacture, art, science, agriculture and the kitchen, such exposition to be held in the school room, on a school day, as often as once during a term, and not oftener than once a month, at which the pupils participating therein shall be required to explain, demonstrate or present the kind and plan of the articles exhibited, or give its method of culture; and work in

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6. If a director intentionally violates law he becomes personally liable. 14 Iowa, 510; 17 Iowa, 155; 24 Iowa, 337, and 38 Iowa, 47.

7. If an agent makes a valid contract without authority, he is himself bound thereby. 37 Iowa, 314.

8. It is a violation of law for a board to pay any member of the board for labor as a building committee, for attendance at meetings, or for any other service performed for the district, whether official in character or not. Section 2780.

9. A member may not be employed by the board to oversee the building of a schoolhouse and receive pay therefor, or to act in any like capacity for which he would be paid from the funds of the district. Such engagement is contrary to public policy and clearly illegal. 78 Iowa, 37, and 87 Iowa, 81.

10. It is the duty of the director to file any contract at once with the president of the board, and secure his approval.

11. No director has power to bind the district by any contract, unless he is authorized by the board to make such contract. A person making a contract without authority may become himself bound. The president may not lawfully approve a contract unless it is made in accordance with all the limitations imposed.

12. The approval of the director's contract by the president is a mandatory act, which he cannot refuse to perform, if the contract is made in compliance with instructions from the board, and otherwise conforms to the law.

13. The record book correctly filled out will be of much assistance to the director each year. Form 34.

14. Children at a state institution, or a private school, should not be enumerated, unless they actually reside in the subdistrict.

15. The failure of a director to make the report, as required by this section, will reduce the semi-annual apportionments for the year, since they are made upon the enumeration of persons of school age. Note 4 to section 2739.

16. In school townships the secretary should require every director to make this report promptly, and should insist that it be made in writing, and certified to be correct.

17. A wilful failure or refusal on the part of the director to make the report to the secretary as required, may be found by the courts to be a misdemeanor. Code, section 4904, and section 2822.

18. In case a director fails to make his annual report as required the secretary should at once collect the statistics necessary for a complete report. The board should insist on promptness in preparing this report, and then should give the secretary a suitable compensation for his labors. Sections 2764 and 2765.

these several departments shall be encouraged, and patrons of the school invited to be present at each exhibition. [15 G. A., ch. 64.]

SEC. **2787. Shade trees.** The board of each school corporation shall cause to be set out and properly protected twelve or more shade trees on each schoolhouse site where such trees are not growing. The county superintendent, in visiting the several schools of his county, shall call the attention of any board neglecting to comply with the requirements of this section to any failure to carry out its provisions. [19 G. A., ch. 23.]

SEC. **2788. Teacher—qualifications.** No person shall be employed as a teacher in a common school which is to receive its distributive share of the school fund without having a certificate of qualification given by the county superintendent of the county in which the school is situated, or a certificate or diploma issued by some other officer duly authorized by law, and no compensation shall be recovered by a teacher for services rendered while without such certificate or diploma. [C. '73, § 1758; R., § 2062.]

SEC. **2789. Keep register—report.** Each teacher shall keep a daily register which shall correctly exhibit the name or number of the school, the district and county in which it is located, the day of the week, month, year, and the name, age and attendance of

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SECTION 2787. Trees should be set out on all schoolhouse sites where good, thrifty shade trees are not already growing, whether such site was secured by purchase, by lease, by gift, or by condemnation under sections 2814–2816.

SECTION 2788. 1. The teacher must have a certificate during the whole term of school. He is not authorized to teach a single day beyond the period named in his certificate, nor to give instruction in any subject which he does not hold a valid credential to teach.

2 If a person is teaching without a certificate any one interested in a legal sense may apply to a court for a writ to prevent the board from continuing such instruction, and to restrain the board from paying for the same.

3. A teacher's contract is sometimes binding though irregular in some respect. A board should not have the benefit of the services of a teacher without remunerating him. In some cases the board may be held personally liable to pay the teacher.

4. In an Illinois case a certificate was not obtained until the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the remainder of the term. This was considered an attempt to do indirectly what there was no power to do directly, and therefore the contract was held to be void, as was the original contract.

5. In case of the temporary absence of the teacher, from sickness or other cause, the place should be supplied with some one duly authorized to teach. The supply should be paid by the teacher whose place is filled.

6 In case a person is employed or continued as a teacher in violation of law without a certificate, a resident of the district may sue out a writ of injunction restraining the person from teaching and the district from paying. Boards employing and paying such teachers are liable to prosecution under the provisions of the general statutes for misapplication of funds Code, sections 4904–4906 and section 2822.

SECTION 2789. 1. Every teacher should take great pains to keep the register required by this section very carefully, in order that the term report may be made out correctly. By doing so the secretary will be able to make his annual report with greater ease, and with added accuracy. Form 35.

2. The board may authorize the president and the secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper

each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of the register shall immediately at the close of the school be filed by the teacher in the office of the secretary of the board. The teacher shall file with the county superintendent such reports and in such manner as he may require. [C.'73, §§ 1759–60; R., § 2062.]

SEC. **2790. New township.** When a new civil township is formed, the same shall constitute a school township, which shall go into effect on the first Monday in March following the completed organization of the civil township. The notices of the first meeting shall be given by the county superintendent, and at such meeting a board of three directors shall be chosen. [C.'73, § 1713.]

SEC. **2791. Attaching territory to adjoining corporation.** In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the county superintendent cannot with reasonable facility attend school

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evidence that the service has been performed, but the order for wages for the last month should not be drawn until the report required by this section is filed in the office of the secretary. Without this register he cannot prepare his annual report as the law directs it to be made. The secretary should carefully examine the register to see whether the record is complete in all respects. Form 36.

3. It is the duty of every board to see that the teachers comply strictly with all requirements made by the county superintendent, as well as with all rules made by the board. Decisions, 54.

4. Every teacher in the county may be required to make such reports, agreeing with the spirit of the law, as the county superintendent may request, in such form and at such reasonable times as the county superintendent may determine.

5. The continued refusal to comply with all uniform and reasonable regulations made by the county superintendent, or by a board, on the part of any one employed as teacher, constitutes good cause for revocation or subsequent refusal of certificate, or for dismissal by the board. Sections 2737 and 2782.

SECTION 2790. 1. The design of the law is that civil and school township boundaries shall coincide as far as possible. Code, sections 551–552 and section 2743.

2. A new school township is not organized until the March after an election of officers for the civil township.

3. The boundaries of subdistricts lying wholly within the old or new school townships are not affected by the division of civil townships.

4. When subdistricts are divided by changes in civil township boundaries, the boards should incorporate the several parts with other subdistricts, or otherwise provide for such territory, so that all entitled may vote at the following subdistrict election. In the absence of such action the territory properly belongs to the subdistrict which it adjoins, and the voters should be allowed to vote therein.

SECTION 2791. 1. The natural obstacle must be a large stream unbridged, an impassable slough, the entire absence of a public highway, or some such natural insurmountable difficulty.

2. Streams well bridged and distance are not natural obstacles in the contemplation of the law.

3. As the county superintendent has original concurrent jurisdiction, an appeal cannot be taken from refusal by the board to accept the territory. Decisions, 44.

4. When the boundaries of districts are changed, the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken. Section 2802.

in their own corporation, he shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section. [C.'73, § 1797.]

SEC. **2792. Restoration.** Where territory has been or may hereafter be set off to an adjoining school township in the same or another county, or attached for school purposes to an independent district so situated, it may be restored to the territory to which it geographically belongs upon the concurrence of the respective boards of directors, and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off or attached, together with a concurrence of the county superintendent and the board of the school corporation which is to receive back the territory. [19 G. A., ch. 160; 18 G. A., ch. 111; C.'73, § 1798.]

SEC. **2793. Boundary lines changed.** The boundary lines of contiguous independent districts within the same civil township may be changed by the concurrent action of the respective boards of directors at their regular meetings in September, or at special meetings thereafter called for that purpose. The independent district from which territory is detached shall after the change contain not less than four government sections of land, and its boundary lines shall conform to the lines of congressional divisions of land. [22 G. A., ch. 62, § 1.]

SEC. **2794. Formation of independent district.** Upon the written petition of any ten voters of a city, town or village of over one hundred residents to the board of the school township in which the portion of the town plat having the largest number of voters is situated, such board shall establish the boundaries of a proposed independent district, including therein all of the city, town or village,

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SECTION 2792. 1 It will be noticed that two distinct and separate methods are provided by this section.

2. The restoration may take effect at any time agreed upon, but if no agreement is made, it will take effect the following March. 59 Iowa, 109.

3. When the boundaries of districts are changed, the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken. 58 Iowa, 77. Section 2802.

4. Where the law is mandatory in requiring a board to act upon a petition, the remedy for its refusal to do so is mandamus, and not appeal. 86 Iowa, 669.

5. Any conflict between districts with regard to boundaries will be best determined by the one aggrieved asking a court to restrain the county treasurer from paying taxes to the other district, on the ground that the district complaining is entitled to receive said taxes. 69 Northwestern Reporter, 1009.

SECTION 2794. 1. The one hundred inhabitants must be contained within the limits of the town or village. Additional territory should be secured by the board in forming the new independent school district. Usually, territory equivalent to about four to six government sections, will constitute a proper district.

2. An independent school district cannot be formed from a city, town or village situated within an *independent* district, because no *school township* board can establish the boundaries as required.

3. The last official census will, as a general rule, be sufficiently accurate to determine questions relating to the population, but in case of doubt, the actual

and also such contiguous territory as is authorized by a written petition of a majority of the resident electors of the contiguous territory proposed to be included in said district, in not smaller subdivisions than entire forties of land, in the same or any adjoining school townships, as may best subserve the convenience of the people for school purposes, and shall give the same notices of a meeting as required in other cases, at which meeting all voters upon the territory included within the contemplated independent district shall be allowed to vote by ballot for or against such separate organization. When it is proposed to include territory outside the town, city or village, the voters residing upon such outside territory shall be entitled to vote separately upon the proposition for the formation of such new district, by presenting a petition of at least twenty-five per cent of the voters residing upon such outside territory, and if a majority of the votes so cast is against including such outside territory, then the proposed independent district shall not be formed. [19 G. A., ch. 118, § 1; 18 G. A., ch. 139; C. '73, §§ 1800–1; R., §§ 2097, 2105.]

SEC. **2795. Organization.** If the proposition to establish an independent district carries, then the same board shall give the usual notice for a meeting to choose a board of directors. Two directors shall be chosen to serve until the next annual meeting, two

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existing facts govern, which may be ascertained by any reliable means. 77 Iowa, 676. Code, section 177.

4. The contemplated independent school district must include all of the city, town or village, and may include as much contiguous territory as seems desirable. It is not limited by subdistrict lines, but may include a part or all of two or more subdistricts, in the same or in adjoining school townships.

5. When the boundaries extend beyond the limits of a town or city, they must conform to lines of congressional divisions of land. Note 9 to section 2801.

6. The board of the school township in which a majority of the voters on the town plat resides, may establish the boundaries of said district without the concurrence of any other board, even when said territory is taken from two or more civil townships in the same or in adjoining counties.

7. The notices of the election to determine the question of a separate organization should state clearly the boundaries of the proposed district.

8. All of the electors residing within the proposed limits must be permitted to vote on the question of separate organization.

9. The president and secretary of the school township should act as chairman and secretary of this meeting, and with one of the board, as judges of the election.

10. The incorporation of a town does not in itself affect the school organization of the district in which the town may be situated.

11. Town sites platted and unincorporated shall be known as villages. Code, section 638.

SECTION 2795. 1. The first board will enter upon its duties as soon as qualified and will organize by choosing a president and a secretary. The term of office of the president will expire on the third Monday in the following March, that of the secretary, on the third Monday in the next September. A treasurer to serve until the third Monday in the following March, will be chosen by the electors at the time directors are chosen.

2. The secretary should immediately file with the county superintendent, auditor and treasurer, each, a certificate, showing the officers of the board, and their postoffice address. All subsequent changes made in the officers of the board should be reported. Section 2766.

3. The secretary and treasurer must qualify within ten days. Section 2760.

until the second, and one until the third annual meeting thereafter. The board shall organize by the election of officers in the usual manner. [15 G. A., ch. 27; C.'73, § 1802; R., §§ 2099, 2100, 2106.]

SEC. **2796. Taxes certified and levied.** The organization of such independent district shall be effected on or before the first day of August of the year in which it is attempted, and, when completed, all taxes certified for the school township or townships of which the independent district formed a part shall be void so far as the property within the limits of the independent district is concerned, and the board of such independent district shall fix the amount of all necessary taxes for school purposes, including schoolhouse taxes, at a meeting called for such purpose at any time before the third Monday of August, which shall be certified to the board of supervisors on or before the first Monday of September, and it shall levy said tax at the same time and in the same manner that other school taxes are required to be levied. [C.'73, § 1804.]

SEC. **2797. Rural independent districts.** At any time before the first day of August, upon the written request of one-third of the legal voters in each subdistrict of any school township, the board shall call a meeting of the voters of the subdistrict, giving at least thirty days' notice thereof by posting three notices in each subdistrict in each school township, at which meeting the voters shall vote by ballot for or against rural independent district organization. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization, then each subdistrict shall become a rural independent district, and the board of the school township shall then call a meeting in each rural independent district for the choice of three directors, to serve one, two and three years, respectively, and the organization of the said rural independent district shall be completed. [22 G. A., ch. 61.]

SEC. **2798. Subdivision of independent districts.** Independent districts may subdivide for the purpose of forming two or more

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4. All proceedings connected with the organization of the district should be recorded by the secretaries in the records of the districts, so that the facts concerning its formation and organization may be readily obtained, in case the validity of the proceedings is ever questioned.

SECTION 2796. 1. This section is construed to mean that the organization contemplated must be made between January first and the first of August.

2. When a new independent school district is organized as provided by this section, the board has authority to determine and certify all necessary taxes, for school purposes, for that year, including schoolhouse taxes.

3. An independent school district composed of territory from two or more counties, belongs, for school purposes, to the county wherein most of the children reside. A certificate should be issued by the superintendent of the county to which it thus belongs, which certificate is valid for any school in the district.

SECTION 2797. 1. The vote upon the change may be taken at any time of year, but the organization cannot be completed between August and January.

2. Unless each and every subdistrict in the school township gives a majority vote favoring the change in form, the township remains a school township.

3. A single subdistrict may be organized independent only when a village, town, or city is included. Section 2794.

4. When the new boards are organized, they should meet as soon as possible, and make settlement of assets and liabilities, as directed by section 2802.

SECTION 2798. 1. The provisions of this section apply to all independent districts and civil township lines are not a bar.

independent districts, or have territory detached to be annexed with other territory in the formation of an independent district or districts, the board of directors of the original independent districts to establish the boundaries of the districts thus formed, such new districts to contain not less than four government sections of land each; but in case a stream or other obstacle shall debar a number of children of school privileges, an independent district may be thus organized containing less territory; or, if such new district shall include within its territory a town or village with not less than one hundred inhabitants, it may in like manner be made up of less territory; but in neither case shall the new district contain less than two government sections of land, nor be organized except on a majority vote of the electors of each proposed district, and the proceedings for such subdivision shall in all respects be like those provided in the section relating to organizing cities and towns into independent districts, so far as applicable. [18 G. A., ch. 131; 17 G. A., ch. 133, §§ 1–4.]

SEC. **2799. Uniting independent districts.** Independent districts located contiguous to each other may unite and form one and the same independent district in the manner following: At the written request of any ten legal voters residing in each of said independent districts, or, if there be not ten, then a majority of such voters, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in each of such districts, by posting written notices in at least five public places in each of said districts, at which meeting the electors shall vote by ballot for or against a consolidated organization of said independent districts, and, if a majority of the votes cast at the election in each district shall be in favor of uniting said districts, the secretaries shall give similar notice of a meeting of the electors as provided for by law for the organization of independent districts including cities and towns. [22 G. A., ch. 63, § 1; C. '73, § 1811.]

SEC. **2800. Rural independent districts united into school township.** A township which has been divided into rural independent districts may be erected into a school township by a vote of the electors, to be taken upon the written request of one-third of the

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2. The amount of territory cannot be less than an equivalent of four government sections, unless the provisions of this section apply.

3. An independent district containing territory amounting to less than eight government sections may be divided into two independent districts, if an unbridged stream or other obstacle prevents a considerable number of scholars from attending school, or if one portion contains a village of not less than one hundred inhabitants. The district so formed must contain territory amounting to not less than two government sections, and a majority of the votes cast in each contemplated district must be cast for the division.

4. When the required number of electors petition for such division the board is compelled to call the election, but the organization cannot be completed between August and January.

5. When an independent district is subdivided, the one of the districts not formed in accordance with the exception made must have at least four sections.

SECTION 2800. 1. The electors of any civil township which has adopted the rural independent school district organization, may vote upon the question of returning to the school township organization.

2. The petition provided for in this section may be presented to the trustees and the vote ordered at any time of the year.

legal voters residing in such civil township. Upon presentation of such written request to the township trustees, they shall call a meeting of the electors at the usual place or places of holding the township election, upon giving at least ten days' notice thereof by posting three written notices in each rural independent district in the township, and by publication in a newspaper, if one be published in such township, at which meeting the said electors shall vote by ballot for or against a school township organization. If a majority of the votes cast at such election be in favor of such organization, each rural independent district shall become a subdistrict of the school township, and shall organize as such on the first Monday in March following by the election of a director, notice of which shall be given as in other cases by the secretary of each of the rural independent districts, and the directors so elected shall organize as a board of directors of the school township on the third Monday in March following. [16 G. A., ch. 155; C. '73, §§ 1815–20.]

SEC. **2801. Division of school township into subdistricts.** The board of any school township may by a vote of a majority of all the members thereof, at the regular meeting in September, or at any

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3. The meeting held to determine the question of school township organization, is a township meeting; if the vote is in the affirmative, each and every rural independent school district in the township becomes a subdistrict of the school township.

4. The township trustees may act as judges of this election, but in their absence the electors assembled may choose a chairman and one or two secretaries to act as judges.

5. The board of each rural independent school district will continue to act until the third Monday in March following the election, at which time a full statement of all assets and liabilities of the district should be reported to the board of the school township when organized.

6. The first board of a school township formed from a township organized as a single rural independent school district, will consist of three directors, elected by the whole township. Section 2752. If this board chooses to subdivide the district, it may do so. Section 2801. Or it may allow the school township to remain a single subdistrict, a plan having very many excellent advantages.

7. The school township meeting is held on the second Monday in March, to vote the necessary schoolhouse taxes, as provided in section 2749.

8. Between the time of the election provided for and the third Monday in March following, the boards of the several rural independent school districts have authority to perform all necessary acts relating to the affairs of their districts, but they cannot incur any indebtedness, nor make any contracts, except such as may be necessary to maintain the usual schools of their districts.

9. Upon the organization of the school township, the secretary should file with the county auditor and treasurer a certified plat of the district, and report to the county superintendent, auditor, and treasurer, the name and address of each officer of the new board. Section 2766.

10. The school township receives all the assets and assumes all the liabilities of the several rural independent school districts. In case a rural independent school district has issued bonds, or otherwise incurred an indebtedness, for the erection of a schoolhouse, the board of the school township has authority to apportion schoolhouse taxes for the payment of such indebtedness, from time to time, as justice and equity may require.

SECTION 2801. 1. All changes in subdistrict boundaries must be made in strict conformity with this section.

special meeting called thereafter for that purpose, divide the school township into subdistricts such as justice, equity and the interests of the people require, and may make such alterations of the boundaries of subdistricts heretofore formed as may be deemed necessary, and shall designate such subdistricts and all subsequent alterations in a distinct and legible manner upon a plat of the school township provided for that purpose, and shall cause a written description of the same to be recorded in the records of the school township, a copy of which shall be delivered by the secretary to the county treasurer and also to the county auditor, who shall record the same in his office. The boundaries of subdistricts shall conform to the lines of congressional divisions of land, and the formation or alteration of subdistricts as contemplated in this section shall not take effect until the first Monday in March thereafter, at which time a director shall be elected for any subdistrict newly formed. [21 G. A., ch. 124; 16 G. A., ch. 109; C.'73, §§ 1725, 1738, 1796; R., § 2038.]

SEC. **2802. Changes of boundaries—division of assets and liabilities.** When any changes are made in the boundaries of any school corporations, the boards of directors in office at the time shall continue to act until the next regular school election, when the new

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2. Subdistrict boundaries can be changed only by affirmative vote of a majority of all the members of the board.

3. While this section provides that boards may change subdistrict boundaries at the regular meeting in September, or at a special meeting called for that purpose, it must be understood that such change cannot be made so late as to prevent the notices of election from being given at least five days previous to the subdistrict elections, as required by section 2751. Decisions, 49.

4. When new civil townships are formed, the corresponding changes in school township boundaries take effect at the next subdistrict election. Section 2790.

5. All territory must be included within some school district, and all of a school township must be included in some subdistrict. Decisions, 28.

6. A subdistrict is not a corporate body and has no financial claims, nor can it be held liable for debts, except as a part of the school township. Decisions, 11.

7. The board may discontinue or abolish a subdistrict by a readjustment of boundaries, taking effect in March following.

8. It is especially important that the county auditor and treasurer be officially notified by the secretary, whenever any changes are made in district boundaries, by the formation of independent districts and otherwise, to enable these officers to perform their duties in the levy of taxes, and the apportionment and disbursement of school funds.

9. By congressional divisions of land is meant those divisions authorized by congress in government surveys, of which the smallest is, in general, one-sixteenth of a section, or a tract of forty acres in a square form. Government lines, however, sometimes meander along streams and other bodies of water, and divisions of land are thus formed of less than forty acres. Decisions, 28.

10. There is nothing in the law fixing the number of school age necessary for a new subdistrict, nor is the exact amount of territory to be included determined by the law.

SECTION 2802. 1. Assets include schoolhouses, sites, and all other property and moneys belonging to the district. Liabilities include all debts for which the district in its corporate capacity is liable. In determining the assets, school property should be estimated at its present cash value.

2. It is presumed that the teachers' fund and contingent fund have been expended equitably. The division of assets will therefore relate to the schoolhouse and other property, moneys in all funds on hand, and taxes uncollected.

corporations shall organize by the election of directors in accordance with the new boundaries, whereupon the new boards shall make an equitable division of all assets and liabilities of the corporations affected; and, if they cannot agree, the matters upon which they differ shall be decided by disinterested arbitrators, one selected by each board having an interest therein, and if the number thus selected is even then one shall be added by the county superintendent, and

3. Each fund should be divided in proportion to the last assessed value of the property, real and personal. Any portion of the teachers' fund derived from the semi-annual apportionment, should be divided in proportion to the number of persons between five and twenty-one years, according to the last enumeration.

4 Schoolhouses will usually become the property of the district in which they are situated. If their value exceeds the amount justly due that district, and there is not sufficient schoolhouse fund on hand to equalize the division, the boards should fix the amount each district should receive or pay.

5. An equitable arrangement mutually satisfactory to the parties in interest will be in accordance with the intent of the law. Any agreement should be reduced to writing, and entered in the records of each district.

6. The districts, after the division, which do not receive their just proportion of schoolhouse property, have a claim against those that do obtain more than a due share. The last are indebted to the first in the difference. 36 Iowa, 216.

7. A simple and just method to dispose of unpaid and delinquent taxes, also of all funds in the hands of the county treasurer, is to direct the payment of these funds in such manner that taxes derived from any part of the territory shall be paid to the district to which such territory will then belong.

8. If money is received which belongs to another, the rule is a general one that the law implies a promise on the part of the receiver to pay it over. Based upon this promise an action may be maintained for its recovery. 11 Iowa, 506 and 80 Iowa, 495.

9. Any conflict between districts with regard to boundaries will be best determined by the one aggrieved asking a court to restrain the county treasurer from paying taxes to the other district, on the ground that the district complaining is entitled to receive said taxes.

10. Section 2793 provides for change of boundaries between adjoining independent districts in the same civil township.

11. If the boundary between an independent school district and school township is the line of the civil township, it cannot be changed. If the independent school district includes a portion of a civil township the remainder of which is a school township, the boundary between the districts may be changed.

12. Where a change of boundaries between districts is desired, and one of the boards acts favorably, a petition may be presented to the other board to concur in that action, although it formerly may have refused to grant a similar petition. From the action of the latter board upon the request an appeal may be taken.

13. No appeal can be taken from an action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or refusal of the second board is the order from which an appeal may be taken. Decisions, 46 and 57.

14. When an appeal is taken from the proper board, the county superintendent must affirm the action of one board or the other, but cannot himself modify the action of the board acting first. Decisions, 57.

15. Territory transferred from one district to another carries with it an equitable proportion of the assets and liabilities of the district from which it is taken, the district accepting it becoming responsible for such liabilities.

16. It is not material which board takes the first action with regard to the transfer of territory. Usually it is desirable to secure the action of the board

the decision of the arbitrators shall be made in writing, either party having the right to appeal therefrom to the district court. [C. '73, § 1715.]

SEC. **2803. Attending school in another corporation.** A child residing in one corporation may attend school in another in the same or adjoining county if the two boards so agree. In case no such agreement is made, the county superintendent of the county in which the child resides and the board of such adjoining corporation may consent to such attendance, if the child resides nearer a schoolhouse in the adjoining corporation and one and one-half miles or more from any public school in the corporation of his residence. But before granting such consent the county superintendent shall give notice to the board where the child resides and hear objections, if any. In case such consent is given, the board of the district of the child's residence shall be notified thereof in writing, and shall

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with regard to which there is no doubt, and afterward to endeavor to induce the other board to take the same action. If the board last acting takes an action different in kind it may be regarded as initiating a new order, which in turn must go to the other board for adoption or rejection.

17. An appeal to the county superintendent will not lie from the joint action of boards in making a settlement of assets and liabilities. Decisions, 80.

SECTION 2803. 1. This section grants to all boards the power to agree upon terms of attendance. Such agreement should name the amount to be paid, if any, the time during which the stipulation shall be in force, and other matters.

2. If scholars reside more than one and one-half miles from a school in their own district and nearer to a school in another district, which they desire to attend, application should first be made to both boards of directors; if the boards refuse to enter into an agreement, they may attend school in such district with the consent of the board of the district where they desire to attend and of the county superintendent of the county in which the children reside.

3. This section applies to districts in the same or in other civil townships.

4. What is sought by the law is to supply to every child advantages equal as nearly as possible with those afforded to the average child.

5. The distance should, in all cases, be computed by the nearest public road.

6. If scholars live nearer to a school in their own district, or less than one and one-half miles of one, they can attend school in another district at the expense of their own district, only by an agreement of both boards.

7. In no case may scholars attend school in a district in which they do not reside, without the consent of the board thereof. Section 2774.

8. The first three lines give the boards power to agree upon terms of attendance, without regard to the distance in the case. But advantage may not be taken of the remainder of the section, unless all the provisions enumerated are fulfilled.

9. In determining distances between schools the measurement must be made by the nearest public highway to each school. And if the person lives off the highway, the distance should be computed by the nearest and most accessible private way as usually traveled from the residence to the highway.

10. What is sought to be determined is the actual distance necessary to be traveled by the scholar. It may therefore sometimes be required to measure from the door of the home of the scholar to the door of the schoolhouse, in order to ascertain definitely the actual distance from school.

11. There is no provision by which the board of children may be paid.

12. In giving or withholding his consent, the county superintendent should consider all the circumstances, and when he has concurred or refused to concur, the matter is concluded for that time, as no appeal will lie.

pay to the other district the average tuition per week and an average proportion of contingent expenses for the school or room thereof in which such child attends. If payment is refused or neglected, the board of the creditor corporation shall file an account thereof certified by its president with the auditor of the county of the child's residence, who shall, at the time of the making of the next semi-annual apportionment, deduct the amount from the sum apportioned to the debtor district and cause it to be paid to the corporation entitled thereto. [17 G. A., ch. 41; 16 G. A., ch. 64; C.'73, § 1793; R., § 2024; C.'51, § 1143.]

SEC. **2804. School age—nonresidents.** Persons between five and twenty-one years of age shall be of school age. Nonresident children and those sojourning temporarily in any school corporation

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13. The position of the county superintendent is somewhat similar to that of a disinterested arbitrator between the two boards. He should confer with both boards if possible, and should take into account all the conditions of the case.

14. If there is little difference in the distance, or if the schoolhouse of the scholar is only slightly in excess of a mile and a half, then the county superintendent should hesitate to concur, especially if it will weaken the funds or diminish the attendance at the home school so as unduly to impair its success.

15. The action of the board where the children desire to attend and of the county superintendent is a concurrent one. The two parties are thus supposed to have equal discretionary powers, and there is no appeal from concurrent action or from the refusal of either to concur.

16. Collection of tuition cannot be made by appeal to the county superintendent, but questions in controversy must be settled through the courts.

17. The notice referred to cannot be said to be officially transmitted unless signed by both the president and secretary. Payment for attendance can be collected from the district where the children reside, only from the date of such notice. Form 37.

18. This notice holds only for the term, or such time as the county superintendent and board name in their written concurrent agreement.

19. Depositing a letter in a postoffice without further proof that such letter reached the party addressed, is not a legal notice as required to secure payment of tuition. Code, section 3531.

20. The average proportion of tuition and contingent expenses for any number of scholars is found by dividing the amount expended for these purposes in the school where they have attended, by the total attendance in days, and multiplying the quotient by the number of days said scholars have attended.

21. When scholars attend a graded school, the average tuition should be computed on the basis of the expense of each pupil in the grade or room in which such scholars are placed; the average expense of contingent fund may be computed as a part of the whole contingent expense of such school.

22. Any other action than compliance with the absolute and explicit terms of the law, will render the collection of tuition difficult and in most cases impossible. Decisions, 44.

23. The provisions of this section are the result of a long experience in this state with regard to the matter of attendance. As a general provision, the law is very equitable and gives almost universal satisfaction.

SECTION 2804. 1. Children under five years of age will be more injured by the confinement than benefited by the instruction. They cannot claim the advantages of the school, and should not be allowed to attend.

2. A child under the minimum legal school age of five years may not be admitted to receive instruction even upon the payment of tuition.

may attend school therein upon such terms as the board may determine. The parent or guardian whose child or ward attends school in any independent district of which he is not a resident shall be allowed to deduct the amount of school tax paid by him in said district from the amount of the tuition required to be paid. [C.'73, § 1795.]

SEC. **2805. Bible not excluded.** The bible shall not be excluded from any public school or institution in the state, nor shall

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3. Persons over twenty-one years of age are not entitled to the benefits of the public schools.

4. The board must be satisfied that the residence of the scholar in the district is actual before allowing free attendance.

5. In determining whether a person is entitled to attendance free of tuition, the board may take any impartial method of deciding the question. Decisions, 67 and 78.

6. Persons may be required to satisfy the board that residence is actual, before being admitted to free attendance.

7. Any one aggrieved by the order of the board admitting, or refusing to admit, a scholar, has the remedy of appeal, or of application at once to a court.

8. Paying school taxes does not entitle nonresidents to school privileges.

SECTION 2805. 1. Our common schools are maintained at public expense, and the law contemplates that they shall be equally free to persons of every faith. A very suitable devotional exercise consists in the teacher reading a portion of scripture without comment, and the repetition of the Lord's prayer.

2. Neither the board nor the electors may direct the teacher to follow a given course in respect to the reading of the bible in school. Each teacher will be guided by his own good judgment, and the wishes of his patrons may properly have weight in aiding him to determine his action.

3. It is a matter of individual option with school teachers as to whether they will read the bible in school or not, such option being restricted only by the provision that no child shall be required to read it contrary to the wishes of his parent or guardian, and such provision is not unconstitutional. 64 Iowa, 367.

4. While moral instruction should be given in every school, neither this section nor the spirit of our constitution and laws will permit a teacher or board to enforce a regulation in regard to religious exercises, which will wound the conscience of any, and no scholar can be required to conform to any particular mode of worship. 64 Iowa, 367.

5. Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, and respect for honest labor, obedience to parents and due deference for old age, shall be given by every teacher in the public schools. School Laws of North Dakota, 1896.

6. The law intends that the public schools of the state shall be absolutely free from any sectarian or denominational bias. The teaching of any peculiar religious doctrine or creed, or the use of any book prepared for the purpose of inculcating such doctrine or creed, is strictly forbidden by the spirit of our law, and cannot be justified or allowed in any case.

7. If a teacher gives religious instruction or teaches in the interest of any church or denomination, the board may be prevented from continuing or sanctioning such instruction, by injunction from the courts, and having ordered or countenanced this instruction, may be prevented in the same manner from paying such teacher from the public school funds.

8. The diversion of the school fund in any form or to any extent for the support of sectarian or private schools is inadmissible and clearly in violation of our laws. 59 Iowa, 70.

any child be required to read it contrary to the wishes of his parent or guardian. [C. '73, § 1764; R., § 2119.]

SEC. **2806. School taxes.** The board of each school corporation shall at its regular meeting in March, or at a special meeting called for that purpose between the time designated for such regular meeting and the third Monday in May, estimate the amount required for the contingent fund, not exceeding five dollars for each person of school age, but each school corporation may estimate not exceeding seventy-five dollars for each school thereof; and also such additional sum as may be authorized in the chapter on uniformity of textbooks; also such sum as may be required for the teachers' fund, which, including the amount received from the semi-annual apportionment, shall not exceed fifteen dollars for each person of school age therein, but each corporation may estimate not exceeding two hundred and seventy dollars, including such apportionment, for each regular school therein. No tax shall be estimated by the board after the third Monday in May in each year. School corporations containing territory in adjoining counties may vote and estimate all

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9. Public money shall not be appropriated, given or loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association or object which is under ecclesiastical or sectarian management or control. Code, section 593.

SECTION 2806. 1. This section requires boards to certify the specific sums necessary to be raised for teachers' and contingent fund to the board of supervisors, whose duty it is to estimate and levy the percentum necessary to raise the amounts so certified.

2. A tax voted after the third Monday in May is void. This renders it essential that boards certify taxes within the required time. 73 Iowa, 304.

3. It is the rule that schoolhouse funds must be voted by the electors. Exceptions, sections 2796, 2767, 2813 and 3973.

4. It is wholly within the discretion of the board of directors to determine the amounts required for the contingent and teachers' funds. 41 Iowa, 153. Any vote of the electors with reference to these amounts is only suggestive, and is not at all binding.

5. If a board thinks best to build a cave it may certify contingent fund for that purpose.

6. This section limits the amount which may be levied for any one year, to fifteen dollars per scholar for teachers' fund and five dollars per scholar for contingent fund, but authorizes the levy of seventy-five dollars for contingent, and two hundred and seventy dollars for teachers' fund for each regular school, even if the levy thereby exceeds five and fifteen dollars per scholar, for these funds.

7. If the amount of schoolhouse tax voted and certified by the board of directors in any year exceeds the limit which the board of supervisors is allowed to levy under the provisions of this section, it is the duty of the board of directors to certify the amount of the deficiency from year to year until the whole amount is levied.

8. The teachers' and contingent funds are not to be apportioned among the subdistricts, but levied uniformly on the taxable property of the school township.

9. Districts formed from territory lying in adjoining counties, may vote and certify to the respective boards of supervisors the number of mills on the dollar required to raise the necessary school taxes.

10. All schoolhouse taxes must be voted either by the district or by the subdistrict voters. Sections 2749, 2750 and 2753. When voted they must in all cases be certified to the board of supervisors. Decisions, 32.

taxes for school purposes in mills. The board shall apportion any tax voted by the annual meeting for schoolhouse fund among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of such fund. [15 G. A., ch. 67, § 1; C.'73, §§ 1738, 1777–8, 1780; R., §§ 2033–4, 2037–44, 2088.]

SEC. **2807. Levy by board of supervisors.** The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it under this chapter, but if the amount certified for any such fund is in excess of the amount authorized by law it shall levy only so much thereof as is authorized by law. If a schoolhouse tax is voted at a special meeting and certified to said board after the regular levy is made, it shall at its next regular meeting levy such tax and cause the same to be forthwith entered upon the tax list to be collected as other school taxes. It shall also levy a tax for the support of the schools within the county of not less than one nor more than three mills on the dollar on the assessed value of all the taxable property within the county. [C.'73, §§ 1779–80; R., §§ 2057, 2059.]

SEC. **2808. Apportionment.** The county auditor shall, on the first Monday in April and the fourth Monday in September of each year, apportion the school tax, together with the interest of the permanent school fund to which the county is entitled, and all other

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11. For the purpose of collection, all taxes voted by the school township meeting must be apportioned among the subdistricts. The basis of this apportionment is the aggregate number of mills previously levied upon the subdistricts for schoolhouse purposes, and the division should be made so as gradually to equalize these rates, in order that the schoolhouse tax may, ultimately, be uniform throughout the district.

12. The township voters may vote a tax for the erection of a schoolhouse in any subdistrict, without previous action of the subdistrict voters.

13. If the subdistrict voters vote to raise a sum for schoolhouse purposes, it is the duty of the secretary to certify the same to the school township meeting.

14. All necessary schoolhouse taxes should, as a rule, be voted by the school township meeting.

15. The first proviso does not apply where a larger tax is required to meet the interest on valid outstanding bonds. 69 Iowa, 612.

16. The second proviso in this section was added for the relief of sparsely settled communities, in which five dollars per scholar for contingent fund and fifteen dollars per scholar for teachers' fund, is not adequate to maintain schools for the time required by law.

17. If the board finds a sufficient amount of teachers' fund and contingent fund on hand and in sight to support the schools for the current year, it may decline to certify any amount to be raised under this section.

18. To determine conclusively whether it is the duty of the board to order the secretary to certify a tax supposed to have been voted by the voters, but with regard to which vote there is some doubt, an application to a court for a writ of mandamus or injunction as the case may be, will secure a settlement of all questions involved.

SECTION 2808. This warrant must be signed by the president and countersigned by the secretary, to authorize payment of the amount named therein upon presentation by the district treasurer. Form 18.

money in the hands of the county treasurer belonging in common to the schools of the county and not included in any previous apportionment, among the several corporations therein, in proportion to the number of persons of school age, as shown by the report of the county superintendent filed with him for the year immediately preceding. He shall immediately notify the president of the board of each corporation of the sum to which it is entitled by such apportionment, and shall issue his warrant for the same to accompany said notice, and shall authorize the treasurer thereof to draw the amount due from the county treasurer. [C. '73, §§ 1781–2, 1841; R., §§ 1966, 2060–1.]

SEC. **2809. Auditor to report.** He shall forward to the superintendent of public instruction a certificate of the election or appointment and qualification of the county superintendent, and shall also, on the second Monday in February and August of each year, make out and transmit to the auditor of state, in accordance with such form as said auditor may prescribe, a report of the interest of the school fund then in the hands of the county treasurer and not included in any previous apportionment, and also the amount of said interest remaining unpaid. [C. '73, § 1783.]

SEC. **2810. Taxes paid over.** Before the third Monday of January, April, July and October in each year, the county treasurer shall give notice to the president of the board of each school corporation in the county of the amount collected for each fund to the first day of such month, and the president of each board shall draw his draft therefor, countersigned by the secretary, upon the county treasurer, who shall pay such taxes to the treasurers of the several school boards only on such draft. He shall also keep the amount of

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SECTION 2809. 1. This certificate should be forwarded to the superintendent of public instruction as soon as the qualification and bond is filed in the office of the county auditor, after such bond has been approved.

2. The certificate referred to should be promptly forwarded to the superintendent of public instruction, otherwise the interests of the county may suffer by the transaction of business with persons not duly authorized to act.

3. The certificate should in all cases certify to the qualification as well as the election or appointment of the county superintendent, for although he may be properly elected or appointed, yet he cannot be recognized until it is known that he has taken the necessary oath of office, and that his bond is approved.

4. Whenever any change is made by resignation or otherwise, a certificate of the appointment and qualification of a successor should be immediately forwarded. Forms 39 and 40.

SECTION 2810. 1. It is the duty of the county treasurer to notify the president of the board of each district, quarterly, of the amount collected for each fund and pay it to the district treasurer on the warrant of the president countersigned by the secretary. Form 41.

2. Whenever a draft is drawn on the county treasury, it is the duty of the secretary to charge the district treasurer with the amount named in the draft, keeping a separate account with each fund. Section 2761.

3. The three funds, teachers', schoolhouse, and contingent, must be kept separate by the county treasurer, as directed in this section, to enable school officers to comply with the law in the discharge of their official duties. Sections 2761, 2762, 2765, 2768 and 2769. Form 41.

4. The division of funds made by the county treasurer must be respected by the board, unless the electors direct schoolhouse funds unappropriated transferred to other funds. This is the only transfer provided for by law.

tax levied for schoolhouse purposes separate in each subdistrict where such levy has been made directly upon the property of the subdistrict, and shall pay over the same quarterly to the treasurer of the school township for the benefit of such subdistrict. [C.'73, §§ 1784–5.]

SEC. **2811. Judgment tax.** When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose. If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay such judgment, the voters thereof shall at their annual meeting vote a sufficient tax for the purpose. In case of failure or neglect to vote such tax, the school board shall certify the amount required to the board of supervisors, who shall levy a tax on the property of the corporation for the same. [18 G. A., ch. 132, § 6; C.'73, § 1787; R., § 2095.]

SEC. **2812. Bonds.** The board of directors may issue bonds in the name of the school corporation to pay any judgment against it, or any matured indebtedness under bonds lawfully issued, and the board of an independent city or town district may issue bonds to

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SECTION 2811. 1. An order drawn under this section is not entitled to payment to the exclusion of other orders. 40 Iowa, 620.

2. Judgment indebtedness may be converted into bonded indebtedness, but not beyond the constitutional limit.

3. The greatest bonded school indebtedness possible is five per cent on the last assessed valuation, and taxes are not counted.

SECTION 2812. 1. Bonds voted under the provisions of this section may be issued and sold as the necessities of the independent school district require, but cannot be made available for the purchase of a schoolhouse site.

2 If actually necessary, the board may issue an order on the schoolhouse fund for the purchase of a site, which order may be indorsed by the treasurer if there is no money in that fund, and draw interest. Section 2768.

3. No independent school district may incur a bonded indebtedness to an amount, in the aggregate, exceeding five per cent on the value of its taxable property. Constitution, article 11, section 3.

4. There is no intimate connection between the levy of taxes and an outstanding bonded indebtedness. The levy of taxes is not intended by the law to be considered as an outstanding indebtedness. The limit of bonded indebtedness is fixed by this section; the limit for levy of taxes, by section 2807.

5. As indicating the valuation of the district, the tax lists may not be taken into account until after the levy of the taxes in September. 70 Iowa, 239.

6. In order that the bonds may be negotiated to the best advantage possible, great pains should be taken to follow the law carefully in every respect.

7. The cost of the blank bonds and the expense of negotiating the bonds, should be paid from the contingent fund.

8. The fact that the vote for bonds was defeated will not prevent the board from calling another election at any time when it thinks best to do so.

9. While a vote to issue bonds is regarded by the courts as somewhat in the nature of permissive authority to the board, yet a board may not attempt to defeat the wish of the voters clearly expressed. Decisions, 75.

10. In the matter of issuing bonds, every legal requirement should be scrupulously adhered to, in order that not even the slightest irregularity may be urged against the validity of the bonds, when they come to be negotiated.

pay any matured indebtedness for money borrowed by it as authorized by law, or for money borrowed for the erection or completion of schoolhouses, when authorized by the voters at the regular meeting or a special meeting called for that purpose, which bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor, shall not run more than ten years, be in denominations of not more than one thousand nor less than one hundred dollars, and bear a rate of interest not exceeding six per cent per annum, payable semi-annually, to be signed by the president and countersigned by the secretary, and shall not be disposed of for less than par value, nor issued for other purposes than in this section provided. They shall be payable, respectively, at the pleasure of such corporation at any time after the expiration of five years, but may be sooner paid if so nominated in the bonds, be registered in the office of the county auditor, numbered consecutively, and redeemable in the order of their issuance. Upon being issued they shall be delivered to the treasurer thereof, the president taking receipt therefor, and thereupon the treasurer shall stand charged on his official bond with their amount. He shall sell the bonds for not less than par value and apply the proceeds thereof in payment of outstanding indebtedness, and for no other purpose than in this section authorized, or he may exchange the new bonds for outstanding bonds without discount, the cost of engraving and printing the bonds to be paid out of the contingent fund. The treasurer shall keep a record of the name and postoffice address of all persons to whom bonds are sold. The provisions relating to payment of county bonds and notice to the owner thereof shall also apply to school bonds issued under this section. [21 G. A., ch. 95; 18 G. A., ch. 51, §§ 1, 3; 18 G. A., ch. 132, §§ 1–5; 16 G. A., ch. 121; C. '73, §§ 1821–2.]

SEC. **2813. Tax to pay bonds or money borrowed.** The board of each school corporation shall, at the same time and in the same manner as provided with reference to other taxes, fix the amount of tax necessary to be levied to pay any amount of principal or interest due or to become due during the next year on lawful bonded indebtedness or in an independent city or town district of any money borrowed for improvements after a vote thereof authorizing the same, which amount shall be certified to the board of supervisors as other taxes, and levied by them on the property therein as other school taxes are levied, but such tax shall not exceed five mills upon the dollar of the assessed valuation of such property for money borrowed for improvements. [18 G. A., ch. 51, § 2; 18 G. A., ch. 132, § 6; C. '73, § 1823.]

SEC. **2814. Schoolhouse sites — acquisition.** Any school corporation may take and hold so much real estate as may be required for schoolhouse sites, for the location or construction

11. If a board takes an action calculated to thwart the will of the voters, perhaps any person interested could secure from a court a writ directing the board to proceed in the line of fulfilling the vote by the voters.

SECTION 2813. To pay bonds, a board may certify in excess of ten mills, if necessary. 69 Iowa, 612.

SECTION 2814. 1. The board should if possible purchase a site.

2. A site of less than one acre may be enlarged to an acre.

3. The acre authorized to be set apart may be so measured as not to include any portion of the highway. 70 Northwestern Reporter, 706.

thereon of schoolhouses and the convenient use thereof, but not to exceed one acre, except in a city or incorporated town it may include one block exclusive of the street or highway, as the case may be, for any one site, unless by the owner's consent, which site must be upon some public road already established or procured by the board of directors, and shall, except in cities, incorporated towns or villages, be at least forty rods from the residence of any owner who objects to its being placed nearer, and not in any orchard, garden or public park. [C. '73, §§ 1825–6.]

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4. The objection of an owner living within forty rods on the opposite side of a site will not prevent an addition to the site on the side away from the residence, so as to include an entire acre.

5. From an order of the board making a location of a site to be secured by condemnation, an appeal will lie the same as from any other order of the board.

6. Property incumbered, occupied as a homestead, or belonging to minor heirs, may be taken under the provisions of this section.

7. If the district cannot establish its claim to the schoolhouse site, owing to the loss of the deed, or for other reason, and the owner refuses to sell or lease the site, the district may avail itself of the provisions of this and the following sections and secure a site not to exceed one acre.

8. When purchased, the provisions of this section do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase and convey real estate accordingly.

9. All sites taken under these sections, must be located on a public road, and at least forty rods from any residence, the owner whereof objects to its being placed nearer, except in incorporated towns.

10. When a site is sought to be condemned, the distance of forty rods mentioned in this section, is measured from the nearest part of the residence to the nearest part of the site, in a straight line.

11. Boards may rebuild on sites without consent of owners of residences within forty rods.

12. Under the Iowa statute of limitations, ten years use of a highway by the public, under a claim of right, will bar the owner of the soil. 19 Iowa, 123.

13. If the public, with the knowledge of the owner of land, has claimed and continuously exercised the right of using the same for a public highway, for a period equal to that fixed by the statute for the limitation of real actions, a complete right to the highway thereby becomes established against the owner, unless it appears that such use was by favor, leave or mistake. 22 Iowa, 457. Code, section 3004.

14. In case the land desired for a school site is under mortgage, the district may receive from the owner the lease of a portion not to exceed one acre, to be held by the district as long as used for school purposes, and when no longer so used, to revert to the owner.

15. The unmolested use of a site for a long term of years is probably sufficient evidence of its dedication to the district for school purposes. At any rate, the district being in possession, it would seem proper for the board to assume a grant, and to continue to occupy the site and improve it. If any person brings an action against the board, the president will then be required to appear and defend in behalf of the district, and counsel may be employed by the board.

16. If a district is in continuous possession under claim of ownership for more than ten years, it becomes the absolute owner of the fee title. 93 Iowa, 45, and 94 Iowa, 676.

SEC. **2815. Condemnation.** If the owner of the real estate desired for a schoolhouse site, or a public road thereto, refuses or neglects to convey the same, or is unknown or cannot be found, the county superintendent of the proper county, upon the application of either party in interest, shall appoint three disinterested referees, unless a less number shall be agreed upon, who shall take and subscribe an oath to the effect that they will faithfully and impartially discharge the duties laid upon them, due notice having been given by the superintendent to the owner of the time and place of making the assessments of damages as and for the length of time required for the commencement of actions in the district court; such referees shall inspect the grounds proposed to be taken, fix the damages sustained as near as may be on the basis of the value of the real estate so appropriated, and report in writing to the superintendent their doings and findings, which report shall be filed and preserved in his office; and upon the amount found by the referees being deposited with the county treasurer, for the use of the owner, possession may at once be taken and the necessary building

SECTION 2815. 1. If personal service cannot be made, the notice must be published in a newspaper. Code, sections 3514–3544. Forms 42, 43, 44, 45 and 46.

2. The oath to the referees may not be administered by the county superintendent by reason of his office. Such oath may be administered by some one empowered in a general way to administer oaths. One referee may administer the oath to another referee. Code, section 393.

3. If the land cannot be procured by contract, the road may be established in the same manner and by the proceedings provided for the establishment of highways, and when the damage has been assessed, the district may pay the same.

4. As a matter of safety, a lease should be executed in duplicate, one to be held by the secretary of the board, and the other by the lessor. The lease should be approved by the board, as in case of a contract, and should be filed with the secretary.

5. Sufficient time must be allowed between the appointment of this commission and the time set for appraising the damages to give the owner legal notice thereof. Code, sections 3517 and 3540.

6. The referees are entitled to two dollars for each day's service, and ten cents per mile from their residence to the location of the property appraised. Code, sections 354 and 1290.

7. The holder of a tax certificate on property sought to be condemned is an owner in such sense that he is entitled to notice. 50 Iowa, 663.

8. When the owner of land taken is unknown, or cannot be found, it is not necessary to print the report of appraisement, or to attempt other notice to said owner than the printed notice required by this section. It is sufficient for the county superintendent to send a certified copy to the board.

9. If the board has deposited with the county treasurer the amount assessed by the referees in accordance with this section, we think the courts would hold that the district had come into possession of the site.

10. The money deposited with the county treasurer should be held for the benefit of the owner of the fee, and not for the mortgagee.

11. Since the receipt of the treasurer for the money deposited with him for the owner of the land, may be the only evidence of title, such a receipt should have a full description of the property, and should be recorded by the county recorder.

12. No deed or other instrument from the owner is required to authorize the district to occupy the land for school purposes. The proceedings should be recorded in full by the district secretary.

or buildings erected and occupied. From the assessment so made either party may appeal to the district court by giving notice thereof as in case of taking private property for works of internal improvement within twenty days after receiving notice of the award made. If such appeal is not taken, the assessment shall be final; if taken, the board may proceed with the construction of improvements, if the deposit hereinbefore provided has been or shall be made. Upon such appeal the school corporation shall not be liable for costs unless the owner shall be allowed a greater sum than given by the referees; all costs in making the referees' assessment to be paid by the school corporation. [C. '73, § 1827.]

SEC. **2816. Reversion.** In the case of non-user for school purposes for two years continuously of any real estate acquired for a schoolhouse site it shall revert, with improvements thereon, to the owner of the tract from which it was taken, upon repayment of the purchase price without interest, together with the value of the improvements, to be determined by arbitration, but during its use the owner of the right of reversion shall have no interest in or control over the premises. [C. '73, § 1828.]

SEC. **2817. Use of barbed wire.** Barbed wire shall not be used to enclose any school buildings or grounds, nor for any fence or other purpose within ten feet of any such grounds. Any person violating the provisions of this section shall be punished by fine not exceeding twenty-five dollars. [20 G. A., ch. 103.]

SEC. **2818. Appeal to county superintendent.** Any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may within thirty days after the rendition of such decision or the making of such order,

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SECTION 2816. 1. In case of the donation of a schoolhouse site, the following reversionary clause may be appended to the deed: *Provided, that if, for the space of two consecutive years said premises shall cease to be used for school purposes, the same shall revert to the original donor, his heirs or assigns, without legal hindrance or expense.*

2. Since the receipt of the treasurer for the money deposited with him, for the owner of the land, may be the only evidence of title, such receipt should have a full description of the property, and contain this proviso in addition to note 1 above: *Upon the repayment of the principal amount paid by the district, without interest, together with the value of any improvements thereon made by the district*, and the receipt should be recorded by the county recorder.

SECTION 2818. 1. There are many matters that may not properly be brought before the county superintendent on appeal. From time to time questions are likely to arise upon which the board should be governed by its best judgment, or by competent legal advice.

2. The filing of an affidavit of appeal has the effect of arresting all action by the board in relation to the matter appealed from.

3. During the pendency of an appeal all matters must remain in *statu quo*, and this can be enforced by writ of injunction. No opinion relating to matters involved in an appeal will be given.

4. An affidavit is a written declaration, sworn to before some officer authorized to administer oaths. Code, section 4673.

5. A county superintendent can have no jurisdiction of an appeal case until the affidavit has been filed. Decisions, 5.

6. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. Form 47.

appeal therefrom to the county superintendent of the proper county; the basis of the proceedings shall be an affidavit filed with the county superintendent by the party aggrieved within the time for

7. The affidavit should contain a statement of the decision complained of and its date, a statement of facts showing that the appellant has an interest in the decision and is injuriously affected by it, and the assignment of errors. Form 47.

8. An affidavit of appeal, to be of any value, must be sufficiently clear to enable the county superintendent to call upon the secretary for a complete transcript of an action that must be described so as to be identified.

9. This affidavit being the first paper filed, care should be taken that the case is properly entitled, and this title should be preserved throughout the further progress of the appeal. The date of filing should be indorsed upon the affidavit by the superintendent.

10. When a board receives official notice that an affidavit of appeal from its order has been filed, all action by the board in relation to the matter appealed from will be suspended until the decision in appeal has been given.

11. The right of appeal is limited to persons aggrieved or injuriously affected by the decision or order complained of. Decisions, 18 and 28.

12. If a person aggrieved with a decision or order of the board fails to protect his rights by taking an appeal within the thirty days prescribed, he is barred by the statute from the remedy of appeal.

13. In computing time the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. Code, section 48, subsection 23.

14. When the act complained of is of a discretionary character, the action of the board should be sustained, unless it is clearly shown that the board violated law, abused its discretion, or acted with manifest injustice. Decisions, 40, 56, 60 and 64.

15. In certain cases an aggrieved party has a choice of legal remedies. 56 Iowa, 476. 69 Northwestern Reporter, 544.

16. As an appeal often consumes valuable time, mandamus is sometimes a more speedy as well as a better remedy, to compel the performance of an official duty. Decisions, 11, 34, 35, 51 and 55.

17. Where the law is mandatory in requiring the board to act upon a petition, the remedy for its refusal is mandamus and not appeal. 86 Iowa, 669.

18. When a board violates a mandatory requirement, application by an interested party to a court for a writ to compel the board to act as directed by the statute is the more speedy and preferable remedy. 44 Iowa, 432, 50 Iowa, 648, and 71 Iowa, 632. Decisions 35, 51 and 55.

19. To correct an illegal action of the board, certiorari, and not appeal, is the remedy. 55 Iowa, 215. Decisions, 17 and 75.

20 That an appeal may lie there must be an order or action by the board. To compel an action appeal is not the remedy, but application to a court of law.

21. By an action of the board is meant a vote taken by it and made of record at a meeting legally constituted. The board may at any time correct mistakes in its record, or supply omissions.

22. Appeal cannot be taken where the board simply refuses or neglects to act. 71 Iowa, 632. Decisions, 73.

23. In case of wilful neglect or intentional failure to take action as intended by the law, the remedy for any party aggrieved is application to a court for a writ to require the board to consider and act upon the important matter brought to its attention. And its order when made of record will then be subject to be made the basis of an appeal.

taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner. [C.'73, §§ 1829-31; R., §§ 2133-5.]

SEC. **2819. Hearing and decision.** The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper school corporation in writing of the taking of such appeal; the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of the record and proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary; after the filing of the transcript aforesaid the

24. If desirable to clear the record, or to make a matter plain beyond question, sometimes the board may re-enact all its former transactions with regard to the matter involved. If it is supposed that the board took an action which purposely was not made a matter of record, it may be compelled by mandamus to complete its record.

25. No appeal may be taken from the action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or refusal of the second board is the order from which an appeal may be taken. Note 13 to section 2802.

SECTION 2819. 1. The notice should describe the decision or order appealed from, so that it may be identified, and should require the district secretary to file the transcript with the superintendent within the time specified. The notice may be served personally or sent by mail. Form 48.

2. The secretary shall make and forward a transcript or copy of the record of all actions of the board relating to the decision or order appealed from, also of all petitions, remonstrances, plats, and other papers pertaining thereto. The original papers must be preserved with the district records. Form 49.

3. The basis of an appeal is the recorded action of the board. If the secretary certifies that there is no record of an action by the board in any such matter as is described in the notice for a transcript, then it will be impossible to carry forward the appeal. Note 23 to section 2818.

3. A failure to file the transcript will not affect the proceedings in any other way than to cause delay. The secretary will take the risk of censure by a court for failure to attend to his official duty. Decisions, 34.

5. The time to elapse between the filing of the transcript and the hearing of the appeal is not fixed by the statute. This is left to the county superintendent to determine.

6. Notice of the time and place of hearing should be given to the appellant, to the secretary of the board, and to any other persons known to be directly interested. The notices may be served personally or sent by mail. Form 50.

7. The appellant, the president, the secretary of the board, and other parties known to be directly interested, shou d receive a copy of this notice.

8. The date of filing every paper should be indorsed thereon, also in the case of motions, orders and rulings of the county superintendent. All oral motions and an abstract of the testimony should be reduced to writing at the time of trial.

9. The docket or minutes of the superintendent should commence by noting the filing of the affidavit. He will afterward, as the acts transpire, record the sending of the notice of appeal to the district secretary, the filing of the transcript, the sending of notices of the hearing, and any adjournment of the case that may be granted. At the trial he will carefully note down the names of all parties appearing, and their postoffice address, and whether they appear for or against the appeal, also, the filing of all papers and names of witnesses, and in whose behalf such papers or witnesses are introduced. The decision of the superintendent will form an appropriate close of his minutes.

county superintendent shall notify in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him. At the time fixed for the hearing he shall hear testimony for either party, and he shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided. [C.'73, §§ 1832–4; R., §§ 2136–8.

SEC. **2820. Appeal to state superintendent—no money judgment.** An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the board of a school corporation to the county superintendent, as nearly as applicable, except that thirty days' notice of the appeal

10. All testimony must be given under oath, and the substance reduced to writing at the time by the county superintendent. It is recommended that a summary of what each witness testifies be made, read to the witness, and signed by him. It is of the first importance that the record of the testimony be full and accurate, as the decision of the county superintendent, also of the superintendent of public instruction, in case the appeal is carried up, must be based upon the record of evidence introduced. This testimony should be preserved with the other papers of the case.

11. While the county superintendent will not be prevented from entertaining and considering testimony not before the board, the general rule and practice should be to attempt to confine the hearing as far as practicable to the matters considered by the board and to the facts, statements, and testimony, that were within the possession of the board at the time the action complained of, which is being reviewed by the county superintendent, was taken.

12. In case of disturbance or interruption during the trial of an appeal before a county superintendent, as he is not invested with complete judicial power, he has only the ordinary remedy of complaint to the proper authorities. Code, section 5033.

13. The county superintendent may upon his own motion call any witness to the stand and have his testimony taken.

14. While mere technicalities should not be permitted to prevent the attainment of justice, it is not inappropriate that as to evidence and practice the superintendent should be governed by many of the rules which ordinarily obtain in courts.

15. The leading question to be determined by the county superintendent is whether in making the order complained of, the board committed error to the extent to require a reversal of its decision or order.

16. Acts of a board purely discretionary in their nature should be given great weight To warrant a reversal, positive error must be found, and such error must appear clearly in the testimony.

17. When an appellate tribunal is unable to decide an appeal because the testimony is insufficient or the transcript of the action of the board is incomplete, and the facts are not sufficiently shown to determine what should be done, the case may be remanded for a new trial, or for further action by the board

18 To those interested in the issue of an appeal the county superintendent may send a simple statement of the result, that is, whether the order of the board was affirmed or reversed.

SECTION 2820. 1. Appeals to the superintendent of public instruction are conducted in the same manner and governed by the same rules, so far as applicable, as appeals to county superintendents. The basis of the appeal must be an affidavit filed in the office of the superintendent of public instruction, within thirty days from the date of the decision appealed from.

shall be given by the appellant to the county superintendent, and also to the adverse party. The decision when made shall be final. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render judgment for money;

2. Upon the filing of an affidavit the superintendent of public instruction will notify the county superintendent to forward a transcript of the papers in the case within thirty days. The original papers must be preserved on file in the county superintendent's office.

3. When an appeal is taken to the superintendent of public instruction, the county superintendent must have a copy of the testimony and of his docket prepared. It is very desirable that this transcript should be in typewritten work.

4. The transcript of the county superintendendent will consist of a literal copy of every paper filed and all indorsements thereon, together with a copy of all testimony given, the whole arranged in chronological order, closing with the decision of the county superintendent in full, with the certificate annexed. Form 51.

5. The transcript in an appeal is supposed to be an exact copy of the papers and testimony in the case, preserved on file in the office of the county superintendent. Any one interested may claim the privilege of examining the original records in the case, at any proper time.

6. It is obvious that the county superintendent himself should not be expected to pay for having a typewritten transcript of the record made in an appeal to the superintendent of public instruction. Expenses of this character, closely connected by law with the work of the county superintendent's office, should be paid for by the board of supervisors in the same manner that assistance is furnished to other county officers when needed.

7. Upon the filing of the transcript, thirty days' notice of the time set for hearing will be given to all parties interested. This time of thirty days may be diminished on the written agreement of both parties.

8. At the hearing, parties interested may appear personally or by attorney, and argue their cases orally if they desire, or they may send arguments in writing, or if possible, in typewriting.

9. The record of the case in the office of the county superintendent, which is a public record and open to examination by parties interested, will furnish all needed data, where access to the transcript sent up is inconvenient.

10. The superintendent of public instruction will not hear original testimony in cases submitted to him. Decisions, 50.

11. Any person aggrieved by an action of the county superintendent in refusing to grant a certificate or in revoking the same, may apply to him for a rehearing, the proceedings to correspond as nearly as possible to the proceedings in the case of an appeal from a board of directors. If any one is aggrieved by the result of this investigation, an appeal may be taken therefrom to the superintendent of public instruction.

12. A person in whose favor an appeal is decided, has the remedy of a writ of mandamus from a court of law to enforce the decision of appeal. 69 Iowa, 533, and 72 Iowa, 379.

13. A decision in appeal by a county superintendent or the superintendent of public instruction is final in the sense that no court will attempt to review or set aside such a decision if the matters included are clearly within the jurisdiction of such school officers. 69 Iowa, 533.

14. An appeal decision does not always prevent the board from acting anew upon the matters involved in the appeal. If the order of a board is affirmed the board will be left free to take any action thought best by it; that is, it will have the same freedom to act that it would have if no appeal had been taken.

neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved. [C.'73, §§ 1835–6; R., §§ 2139–40.]

SEC. **2821. Witnesses—fees.** The county superintendent in all matters triable before him shall have power to issue subpœnas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the contingent fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by him, which shall be collected as other judgments.

SEC. **2822. Penalties.** Any school officer wilfully violating any provision of this chapter, or wilfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein. [C.'73, §§ 1746, 1786; R., §§ 2047, 2081; C.'51, § 1137.]

SEC. **2823. Provisions apply to all corporations—issuance of bonds.** The provisions of this chapter shall apply alike to all districts, except when otherwise clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as

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15. Until the board has taken a different action no doubt mandamus will be a remedy to compel the board to carry into effect the appeal decision and the former action of the board.

16. If it is shown conclusively that a transcript is materially defective, that valuable testimony heard upon the trial before the county superintendent is not included in the transcript, or that testimony which should not have been omitted was excluded, an appeal case may be remanded to the county superintendent for another trial.

17. When the decision of the county superintendent on appeal, reversing the order of the board, is reversed by the superintendent of public instruction on the appeal to him, the effect of the last decision, which is final, is to affirm the original order made by the board, and the result of this is to leave the matter as entirely in the hands of the board as though no appeal had ever been taken from its action. Decisions, 56.

18. But if the county superintendent reverses an order of the board and the superintendent of public instruction affirms the decision of the county superintendent, such decision will prevent the board from taking any action in the matter until some material change occurs, rendering such a new action necessary. Decisions, 37 and 72.

19. Payment for postage in advance will be required with the affidavit. It is impossible to tell what amount of postage will be needed in each case, and one dollar will be required to cover all needed postage. If the dollar does not accompany the affidavit, the filing will be delayed until the amount is received.

nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation.

OF THE UNIFORMITY, PURCHASE AND LOANING OF TEXT-BOOKS.

SECTION **2824. Adoption—contract—agent.** The board of directors of each and every school corporation in the state of Iowa is hereby authorized and empowered to adopt text-books for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, and said money so received shall be returned to the contingent fund. The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies for sale, and, to insure the safety of the books and moneys,

SECTION 2824. 1. There is nothing in this and the following sections from which it can be inferred that a contract must be entered into for five years. The law does not attempt to fix an exact limitation as to the time that should be contracted for. It seems to be the intent of the law that the board of directors or the county board of education should carefully avoid making a contract which might have the effect of binding its successors in office.

2. It is within the power of any board to forbid the use of other books than those adopted for the district, and to provide by rule or regulation that scholars persistently and continuously refusing to conform to such regulation shall be refused instruction until they comply with the rule. Teachers failing to regard a rule or direction of the board that instruction be given from no other books than those legally in use, take the risk of being cited for trial under section 2782.

3 The word *cost*, in this section, should be understood to mean contract price. Any extra expense connected with securing the books should not be added to their purchase price, but should be paid from the contingent fund, upon separate orders. In this way the cost to the purchaser will agree with the contract price, and uniformity in cost for the same book will obtain all over a large district having several selling places, and will also be common in many districts and counties, while the extra expense for handling, drayage, storage, etc., may differ somewhat in connection with each different person selected to keep the books for sale.

4. We think the words *any and all other necessary school supplies* are intended to include only such articles as it is customary for parents to purchase for the use of their children in school work. For instance, globes and charts have not been furnished by the children. They cannot be bought with the money of the district, resold, and the money returned to the contingent fund as directed by the law.

5. Text-books of every variety, in all classes and grades, and all kinds of supplies usually purchased by the children for use in the schools for the purposes of instruction, may be purchased under this act.

6. It is evidently not the intention to impose a hardship upon the person who keeps the books and supplies for sale, but simply to guard the district against possible loss. The board is not to be considered as released in the slightest degree from its obligation, under the general law, to protect the funds. The bond is required for additional protection. Form 52. Nor will the fact that the board requires a bond from another person in any way release the treasurer from his absolute responsibility for all funds of the district coming into his hands, from whatever source.

the board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable. [25 G. A., ch. 35; 23 G. A., ch. 24, §§ 1, 2.]

SEC. **2825. Use of contingent fund—additional tax.** All the books and other supplies purchased under the provisions of this chapter shall be paid for out of the contingent fund, and the board of directors shall annually certify to the board of supervisors the additional amount necessary to levy for the contingent fund of said district to pay for such books and supplies. But such additional amount shall not exceed in any one year the sum of one dollar and fifty cents for each pupil residing in the school corporation, and the amount so levied shall be paid out on warrants drawn for the payment of books and supplies only, but the district shall contract no debt for that purpose. [Same, § 2.]

SEC. **2826. Purchase — exchange.** In the purchasing of text-books it shall be the duty of the board of directors or the county board of education to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted. [Same, § 3.]

SEC. **2827. Suit on bond.** If at any time the publishers of such books as shall have been adopted by any board of directors or county board of education shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors or county board of education may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher. [Same, § 4.]

SECTION 2825. 1. Any contingent fund on hand may be used to purchase books and supplies. As the proceeds from sales must be returned at once to the contingent fund, no large additional amount will ordinarily be needed to enable the average district to secure books and supplies under this law.

2. When the board is estimating the levy for the contingent fund, it may include in the estimate an amount needed to pay any necessary expense connected with securing the books.

3. All payments under this chapter must be made in strict accordance with the other provisions of law governing the disbursement of school moneys. No order for any purpose may be drawn until the account has been regularly audited.

4. It is desirable that the cost to the scholar shall be the lowest possible. Any extra expense connected with securing the books should not be added to their purchase price, but should be paid out of the contingent fund, upon separate orders. In this way the cost to the purchaser will agree with the contract price, and uniformity in cost for the same book will be common in many districts and counties. Note 3 to section 2824.

SECTION 2826. 1. The provision allowing books in use to be exchanged on equitable terms for the new books adopted, will assist very materially in securing uniform books, as well as in reducing the expense to the people.

2. The good of the schools will be best advanced if it is ordered that the same book or books in any branch must be used in all the schools of the same grade in the district. This will simplify the purchase, and also facilitate the introduction of uniform books.

SEC. **2828. Bids.** Before purchasing text-books under the provisions of this chapter it shall be the duty of the board of directors, or county board of education, to advertise, by publishing a notice for three consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received, the classes and grades for which text-books and other necessary supplies are to be bought, and the approximate quantity needed; and said board shall award the contract for said text-books and supplies to any responsible bidder or bidders offering suitable text-books and supplies at the lowest prices, taking into consideration the quality of material used, illustrations, binding, and all other things that go to make up a desirable text-book; and may, to the end that they may be fully advised, consult the county superintendent, or, in case of city independent districts, with city superintendent or other competent person, with reference to the selection of text-books: *provided* that the board may reject any and all bids, or any part thereof, and re-advertise therefor as above provided. [Same, § 5.]

SEC. **2829. Change—question submitted.** It shall be unlawful for any board of directors or county board of education, except as provided in section twenty-eight hundred and twenty-seven of this chapter, to displace or change any text-book that has been regularly adopted or re-adopted under the provisions of this chapter, before the expiration of five years from the date of such adoption or re-adoption, unless authorized to do so by a majority of the electors present and voting at their regular annual meeting in March, due notice of said proposition to change or displace said text-books having been included in the notice for the said regular meeting. [Same, § 6.]

SEC. **2830. Samples—lists—bonds.** Any person or firm desiring to furnish books or supplies under this chapter in any county shall, at or before the time of filing his bid hereunder, deposit in the office of the county superintendent samples of all text-books included in his bid, accompanied with lists giving the lowest wholesale and contract prices for the same. And said samples and lists shall remain in the county superintendent's office, and shall be delivered by him to his successor in office, and shall be kept by him in such safe and convenient manner as to be open at all times to the inspection of such school officers, school patrons and school teachers as may desire to examine the same and compare them with others, for the purpose of use in the public schools. The board of directors and county board of education mentioned shall require of any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and

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SECTION 2828. 1. A board may not secure the advantages of purchasing text-books without first advertising for bids and letting the contract in the manner required. And this is equally true even if it is expected that a new contract will be made for the books in present use. Form 53.

2. As the period of adoption is likely to be renewed, it is essential that the best books obtainable be chosen. The knowledge and experience of county and city superintendents render them peculiarly qualified to advise the board.

3. Many years ago a provision of the law allowed the superintendent of public instruction to recommend text-books for use in the public schools. The omission of the provision referred to from our statutes indicates that the practice of commendation by such official is not expected by the law.

with such conditions and sureties as may be required by such board of directors or county board of education, for the faithful performance of any such contract. But bonds of surety companies duly authorized under the laws of Iowa shall be accepted. [Same, § 7.]

SEC. **2831. County board of education—question as to county uniformity.** The county superintendent, the county auditor and the members of the board of supervisors shall constitute a county board of education. When petitions shall have been signed by one-half the school directors in any county, other than those in cities and towns, and filed in the office of the county superintendent of such county at least thirty days before the annual school elections, asking for a uniform series of text-books in the county, then such county superintendent shall immediately notify the other members of the county board of education in writing, and within fifteen days after the filing of the petitions said board of education shall meet and provide for submitting to the electors at the next annual meeting the question of county uniformity of school text-books. [Same, §§ 8, 9.]

SEC. **2832. Selection of books—depositories.** Should a majority of the electors voting at such elections favor a uniform series of text-books for use in said county, then the county board of education shall meet and select the school text-books for the entire county, and contract for the same under such rules and regulations as the said board of education may adopt. When a list of text-books has been so selected, they shall be used by all the public schools of said county, except as hereinafter provided, and the board of education

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SECTION 2831. It is intended that at least one-half of the individuals composing all boards, except those of city and town districts, shall sign the petition referred to. Form 55.

SECTION 2832. 1. The county board of education is a continuous body.

2. County boards of education will from time to time make such rules and regulations as seem necessary to carry out the purpose and spirit of the law.

3. Purchases of records, dictionaries, apparatus and similar supplies for the use of the district may not be made by contract under this law, but such articles will be bought with contingent fund, as provided by section 2783. Note 4 to section 2824.

4. The county board of education must cause the books to be sold to the people direct, under such regulations as the board may adopt.

5. Security by bond made payable to the county, may be required from depositaries. But the fact that the money from sales must be returned to the county funds monthly, will lessen the need for as much security as would be necessary if a large sum of money could be held by a depositary for a long time.

6. The county board of education should arrange for a sufficient number of depositories to accommodate fully the people of every district in the county.

7. It would promote an equality of price for the same book in the several counties, if any slight extra expense connected with securing or handling the books were not added to the contract price, but paid for from the county funds, by the board of supervisors. In this way, the books and supplies may be sold to the people at cost, the same as provided under section 2824, when purchase is made by a district. Note 4 to section 2825.

8. It is apparent that there will be many questions arising upon which we cannot venture an opinion. Any matter in which the binding force or validity of a contract is involved, can be determined only by the courts of law.

9. The county attorney is the legal adviser of the county board of education, and he should be freely consulted on questions upon which the board may be in doubt. Code, section 302.

may arrange for such depositories as it may deem best, and may pay for said school books out of the county funds, and sell them to the school districts at the same price as provided for in section twenty-eight hundred and twenty-four of this chapter, and the money received from said sales shall be returned to the county funds by said board of education monthly. The boards of school officers, who are hereby made the judges of the school meetings, shall certify to the board of supervisors the full returns of the votes cast at said meetings the next day after the holding of said meetings, who shall, at their next regular meeting, proceed to canvass said votes and declare the result. [Same, § 9.]

SEC. **2833. Proceedings of county board.** The county superintendent shall in all cases be chairman of the county board of education, and the county auditor shall be the secretary, and a full and complete record shall be kept of their proceedings in a book kept for that purpose in the office of the county superintendent. A list of text-books so selected, with their contract prices, shall be reported to the state superintendent with the regular annual report of the county superintendent. [Same, § 10.]

SEC. **2834. Officers not to be agents.** It shall be unlawful for any school director, teacher or member of the county board of education to act as agent for any school text-books or school supplies during such term of office or employment, and any school director, officer, teacher or member of the county board of education who shall act as agent or dealer in school text-books or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution. [Same, § 11.]

SEC. **2835. City schools.** The provisions of sections twenty-eight hundred and thirty-one, twenty-eight hundred and thirty-two and twenty-eight hundred and thirty-three of this chapter shall not apply to schools located within cities or towns, nor shall the electors of said cities or towns vote upon the question of county uniformity; but nothing herein shall be so construed as to prevent such schools in said cities and towns from adopting and buying the books adopted by the county board of education at the prices fixed by them, if by a vote of the electors they shall so decide. [Same, § 12.]

SEC. **2836. Free text-books—question submitted.** Whenever a petition signed by one-third or more of the legal voters, to be determined by the school board of any school corporation, shall

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SECTION 2834. 1. The intention of this section is to prohibit any of the persons named from engaging in any business in connection with school text-books or supplies, by which his pecuniary interests might be brought in conflict with his official duties.

2. The fact that a person is subject to the penalties named, for violating the provisions of this section, will not operate to deprive him of his office or position.

SECTION 2835. All except sections 2831, 2832 and 2833, apply to city and town independent school districts, and such districts may purchase books and supplies in the same manner as other districts, under sections 2824 to 2830.

SECTION 2836. These provisions afford all districts the opportunity to supply free books, so that every child may continuously enjoy the privileges of school. It is believed that if districts will take action in accordance with the spirit of the law, the percentage of attendance at school can be materially increased, and the usefulness of our schools to all the children, greatly enhanced.

be filed with the secretary thirty days or more before the annual meeting of the electors, asking that the question of providing free text-books for the use of pupils in the public schools thereof be submitted to the voters at the next annual meeting, he shall cause notice of such proposition to be given in the call for such meeting. [26 G. A., ch. 37, § 1.]

SEC. **2837. Loaning—discontinuance.** If, at such meeting, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school corporation to loan text-books to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of text-books, and loan them to the pupils. The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books, and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any text-book used in the school at cost. No pupil already supplied with text-books shall be supplied with others without charge until needed. The electors may, at any election called as provided in the last section, direct the board to discontinue the loaning of text-books to pupils. [Same, §§ 2–6.]

SECTION 2837. As much of the success of free text-books will depend upon the rules and regulations adopted by the board to govern the care and use of the books, a board should take more than the usual pains to adopt plain, comprehensive, and effective rules for the guidance of all concerned.

BLANK FORMS.

NUMBER 1.—SECTION 2737.

(*Teacher's certificate.*)

TEACHER'S.....CLASS CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,

....., Iowa,....., 189..

This certifies that.....has passed a satisfactory examination in the branches named herein, with the results appended, is of good moral character, and is in all other respects possessed of the necessary qualifications as an instructor. I hereby authorize.....to teach the subjects named in any public school of.....county for a period of.....months from the date of this certificate.

No..... .....

County Superintendent.

RESULT OF EXAMINATIONS.	PER CENT.
Orthography	.....
Reading.....	.....
Writing.....	.....
Arithmetic.....	.....
Geography	.....
Grammar.....	.....
U. S. History....	.....
Physiology, etc..	.....
....	.....
....	.....

STUB FOR ABOVE FORM.

No.....

Granted to

.....

Postoffice .....

Age..... Terms taught.....

Granted....., 189..

Expires....., 189..

RESULT OF EXAMINATIONS	PER CENT.
Orthography	.....
Reading.....	.....
Writing	.....
Arithmetic	.....
Geography	.....
Grammar.....	.....
U. S. History.....	.....
Physiology, etc.....	.....
.....	.....
.....	.....

STUB FOR NEXT FORM.

No.....

Granted to

.....

Postoffice.....

Age..... Terms taught.....

Grantes....., 189..

Expires....., 189..

RESULT OF EXAMINATIONS.	PER CENT.
Orthography	.....
Reading.....	.....
Writing	.....
Arithmetic.....	.....
Geography.....	.....
Grammar	.....
U. S. History.....	.....
Physiology, etc.....	.....
Didactics.....	.....
Elementary Civics.....	.....
Elementary Algebra.....	.....
Elements of Physics	.....
Elementary Economics.....	.....
.....	.....
.....	.....

NUMBER 2.—SECTION 2737.

(*Teacher's certificate for two years.*)

TEACHER'S.....CLASS CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,

.....Iowa,.....189....

This certifies that.....has passed a satisfactory examination in the branches named herein, with the results appended, is of good moral character, has had thirty-six weeks' successful experience in teaching, and is in all other respects possessed of the necessary qualifications as an instructor. I hereby authorize..... to teach the subjects named in any public school of.....county for a period of two years from the date of this certificate.

No.... .....

County Superintendent.

RESULT OF EXAMINATIONS.	PER CENT.
Orthography	
Reading	
Writing	
Arithmetic	
Geography	
Grammar	
U. S. History	
Physiology, etc	
Didactics	
Elementary Civics	
Elementary Algebra	
Elements of Physics	
Elementary Economics	

NUMBER 3.—SECTION 2737.

(*Certificate for special branches.*)

TEACHER'S SPECIAL CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,

....., Iowa, ..., 189..

This certifies that.....has passed a satisfactory examination in the special studies written herein, is of good moral character, and is in all other respects possessed of the necessary qualifications as an instructor. I hereby authorize....to teach only the branches named in any public school of..... county for a period of.....months from the date of this certificate.

No.... .....

County Superintendent.

STUB FOR ABOVE.

No.....

Granted to

.....

Postoffice.....

Age..... Terms taught.....

Granted .....,189..

Expires.....,189..

RESULT OF EXAMINATIONS.	PER CENT.

NOTE.—This is printed on the face of the certificate, similar to Form 2.

RESULT OF EXAMINATIONS.	PER CENT.

NUMBER 4.—SECTION 2737.

REVOCATION OF TEACHER'S CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,

....., Iowa, ..., 189..

To Boards of Directors:

You are hereby notified that a certificate to teach, granted to....., dated....., 189.., is hereby revoked in accordance with the provisions of section 2737, the said revocation to take effect from the date hereof.

.....

County Superintendent.

NUMBER 5.—SECTION 2738.

APPLICATION FOR TEACHERS' NORMAL INSTITUTE.

OFFICE OF COUNTY SUPERINTENDENT,

....., Iowa, ..., 189..

To the Superintendent of Public Instruction:

I desire to hold the annual normal institute for.....county at....., Iowa, commencing on the.....day of....., 189.., and closing on the.....day of....., 189..

I shall act as director, and have selected, subject to your approval,..... as conductor, and....., ..., ..., as instructors, and hereby request your concurrence in these arrangements.

.....

County Superintendent.

NUMBER 6.—SECTION 2738.

MONTHLY REPORT OF INSTITUTE FUND.

Received from examination fees, for the month of....., and paid to the treasurer of.....county, Iowa:

	NAME OF APPLICANT.	AMOUNT RECEIVED.		NAME OF APPLICANT.	AMOUNT RECEIVED.
1	.....	$.....	26	.....	$.....
2	.....	.....	27	.....	.....
	* * * *	* *		* * * *	* *
24	.....	.....	49	.....	.....
25	.....	.....	50	.....	.....
				Total.....	$.....

I certify that the above report is correct.

....., Iowa, ...

County Superintendent.

..... 1, 189..

NUMBER 7.—SECTION 2738.

REPORT OF REGISTRATION FEES, INSTITUTE FUND.

Received from registration fees of normal institute, held at....., commencing....., 189..

	NAME OF TEACHER.	AMOUNT RECEIVED.			NAME OF TEACHER.	AMOUNT RECEIVED.	
1		$.....	....	151		$.....	....
2		.....	....	152		.....	....
	* * * * * *				* * * * * *		
149		.....	....	299		.....	....
150		.....	....	...	State appropriation	.....	....
					Total.....	$.....	....

I hereby certify that the above report is correct.

....., Iowa. .....

.....1, 189.. *County Superintendent.*

NUMBER 8.—SECTION 2738.

RECEIPT OF INSTITUTE FUND.

$.....

Received of....., county superintendent,

.....dollars institute fund.

....., Iowa, ...

.....1, 189.. *County Treasurer.*

NUMBER 9.—SECTION 2738.

ORDER ON INSTITUTE FUND.

OFFICE OF COUNTY SUPERINTENDENT,

$..... ....., Iowa, ..., 189..

To....., Treasurer of.....county:

Pay to....., or order.....dollars out of the institute fund, for....., as by bill No....., approved this day, as required by law, and on file in my office.

No..... .....

County Superintendent.

NUMBER 10.—SECTION 2746.

NOTICE OF ANNUAL MEETING.

Notice is hereby given to the qualified electors of the..... of....., in the county of.....state of Iowa, that the annual meeting of said district will be held at....., on the second Monday in March, 189...., at....o'clock ....m., and closing at....o'clock....m.

A director will be elected for a term of.....years, to succeed ....., one for.....years, to succeed ....., and.....

.....

The meeting will be open for the transaction of such business as may legally come before it, and the board has directed that the following propositions shall be submitted to and determined by the voters:

.....
.....
.....

.....

....., 189.. *Secretary.*

NUMBER 11.—SECTION 2746.

PROCEEDINGS OF ANNUAL MEETING.

March...., 189..

The electors of the.....
of.....in the county of....., state of Iowa, assembled at....., pursuant to notice. The meeting was called to order by the president at .....o'clock, ...m. The secretary being absent, ...was elected secretary.

The order of business and powers of the meeting were stated by the president. It was moved by....., seconded by ....., that the ballots provide for voting upon a tax of.....dollars for schoolhouse purposes.

Carried,.....votes for and.....votes against.

On motion of.....seconded by....., it was voted that the ballots provide for voting a tax of eight hundred dollars for the purpose of building a schoolhouse in subdistrict No.....

It was ordered that the ballots afford opportunity to vote upon the proposition to transfer.....dollars of unused schoolhouse fund to the teachers' (contingent) fund.

The polls for voting were opened at.....minutes after.....o'clock. At.....minutes after.....o'clock the polls were closed, the ballots were counted, and the vote upon the several matters voted upon was in each case as follows:

.....
.....
.....

The time required by law during which the meeting must be kept open having passed, the meeting adjourned at.....minutes after.....o'clock.

....

Secretary. *Chairman.*

NUMBER 12.—SECTION 2746.

CERTIFICATE OF ELECTION.

We hereby certify that at the annual meeting of the....., in the county of....., state of Iowa, held on the second Monday in March, 189.., ...was duly elected .....of said district, for a term of.....years, to succeed.....

.....
.....
.....

....., 189.. *Judges of Election.*

NUMBER 13.—SECTION 2751.

NOTICE OF SUBDISTRICT MEETING.

Notice is hereby given that a meeting of the qualified voters of subdistrict No....., of the school township of....., in the county of....., state of Iowa, will be held at....., on the first Monday in March, 189..; at.... o'clock....m., for the election of a director and for the transaction of such other business as may legally come before it. The question whether seven hundred dollars schoolhouse tax shall be voted upon the property of the subdistrict will be determined by ballot at such meeting.

.....

....., 189.. *Director of Subdistrict No.....*

NUMBER 14.—SECTION 2751.

PROCEEDINGS OF ANNUAL SUBDISTRICT MEETING.

March ...., 189..

The voters of subdistrict No....., of the school township of....., in the county of....., state of Iowa, met pursuant to notice.

.....was appointed chairman, and.....secretary of the meeting.

The chairman announced the powers of the meeting.

The polls were opened at.....minutes after.....o'clock. At.....minutes after ....o'clock the polls were closed, and the judges proceeded to count the ballots. For director.....votes were cast for....., ...votes for ....., and.....votes for....., upon which..... was declared elected director for the ensuing year, and he was given his certificate of election. Upon the proposition to vote a schoolhouse tax of seven hundred dollars upon this subdistrict, ...votes were cast for the tax, and..... against the tax. It was declared that the vote was.....

At....minutes after....o'clock, on motion of....., the meeting adjourned.

....

Secretary. *Chairman.*

NUMBER 15.—SECTION 2751.

CERTIFICATE OF ELECTION FOR DIRECTOR OF SUBDISTRICT.

We hereby certify that at the annual meeting of subdistrict No....., of the school township of....., in the county of....., state of Iowa, held on the first Monday in March, 189.., ...was duly elected director of said subdistrict.

.....

.....

....., 189.. *Judges of Election.*

NUMBER 16.—SECTION 2753.

CERTIFICATE OF TAX VOTED BY SUBDISTRICT MEETING.

To....., Secretary Board of Directors of the School Township of.....:

I hereby certify that the voters of subdistrict No....., of the school township of....., in the county of....., state of Iowa, at the..... meeting held....., 189.., voted a tax of.....dollars for the erection of a schoolhouse in said subdistrict.

....

....., 189.. *Secretary of Subdistrict Meeting.*

NUMBER 17.—SECTION 2760.

BOND OF SECRETARY OR TREASURER.

Know all Men by these Presents: That I,....., as principal, and..... .....and.....as sureties, of the..... .....in the county of....., state of Iowa, are held and firmly bound unto the....., in the said county and state, in the penal sum of..... .....dollars, to be paid to the said..... ....., for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

The condition of this obligation is that as..... of the....., in the county of....., state of Iowa, he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud or oppression, discharge all duties now or hereafter required of his office by law; and the sureties on such bond shall be liable for all money or public property that may come into the hands of such officer at any time during his possession of such office.

In testimony whereof we have hereunto subscribed our names this.....day of....., 189..

.....

Principal.

.....

.....

Sureties.

STATE OF IOWA, }
.....county. } ss.

I,....., do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of secretary (or treasurer) of the....., in the county of....., state of Iowa, as now or hereafter required by law.

.....

Subscribed and sworn to before me by the above named..... this.....day of....., 189..

In testimony whereof witness my hand and official seal.

.....

[SEAL.] *Notary Public.*

STATE OF IOWA, }
.....county. } ss.

I....., being duly sworn, depose and say that I am a resident freeholder of the state of Iowa, and am worth the sum of .....dollars beyond the sum of my debts, and have property liable to execution in this state equal to the sum of.....dollars.

.....

Subscribed and sworn to before me by the above named.....
this.....day of....., 189..

In testimony whereof witness my hand and official seal.

.....

[SEAL.] *Notary Public.*

NUMBER 18.—SECTION 2762.

DRAFT ON THE COUNTY TREASURER.

....., 189..

To....., *County Treasurer:*

Pay to....., treasurer of the....., in the county of....., state of Iowa,.....dollars teachers' fund,.....dollars schoolhouse fund, and.....dollars contingent fund, being the amount of tax collected and due this district for the quarter ending....., 189.., as shown by your notice of....., 189..

....

Secretary. *President.*

NUMBER 19.—SECTION 2762.

ORDER ON DISTRICT TREASURER.

$..... ....., 189..

To....., *Treasurer of the*.....:

Pay to....., or order, ...dollars from the.....fund, for.....

....

Secretary. *President.*

NUMBER 20.—SECTION 2762.

ORDER REGISTER OF SECRETARY AND TREASURER.

Number.	DATE.	IN WHOSE FAVOR DRAWN.	FOR WHAT PURPOSE.	Teachers' fund.	Schoolhouse fund.	Contingent fund.
1	April 7, 189..	John Smith	Teaching school.....	$45.00	.....	.....
2	April 7, 189..	A. J. Adams.....	Repairs on schoolhouse.	.....	$ 5.00	.....
3	April 7, 189..	Joel B. Young....	Fuel	.....	.....	$ 5.00
4	May 10, 189..	Thomas Harrison.	Erection of schoolhouse	.....	125.00	.....
5	May 14, 189..	Sarah Johnson ...	Teaching school.....	63.74	.....	.....

NUMBER 21.—SECTION 2764.

REGISTER OF PERSONS OF SCHOOL AGE.

NAME.	SEX.	AGE	PARENT OR GUARDIAN.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

....., 189..

NUMBER 22.—SECTION 2766.

CERTIFICATE TO COUNTY OFFICERS.

I hereby certify that at a meeting of the board of directors of the..... held on the.....day of....., 189.., the following officers were elected and have qualified according to law:

....., to the office of....., postoffice.....
....., to the office of....., postoffice.....
....., to the office of..... ....., postoffice.....
....., 189.. .....

Secretary.

NUMBER 23.—SECTION 2767.

CERTIFICATE OF TAXES.

To the Board of Supervisors of.....County:

I hereby certify that a tax of.....dollars has been determined by the board of directors of the....., in the county of....., state of Iowa, for the teachers' fund, and.....dollars for the contingent fund, as provided in section 2806.

...., 189.. .....

Secretary.

NUMBER 24.—SECTION 2767.

CERTIFICATE APPORTIONING TAXES.

To the Board of Supervisors of.....County:

I hereby certify that a tax voted by the voters of the school township of..... ....., in the county of....., state of Iowa, of..... dollars for schoolhouse purposes, has been apportioned by the board of directors among the subdistricts as follows:

Upon subdistrict No. 1,.....dollars.
Upon subdistrict No. 2,.....dollars.
Upon subdistrict No. 3,.....dollars.
Upon subdistrict No. 4,.....dollars.
Upon subdistrict No. 5,..... .....dollars.

....., 189.. .....

Secretary.

NUMBER 25.—SECTION 2767.

CERTIFICATE OF TAX VOTED BY A SUBDISTRICT.

To the Board of Supervisors of.....County:

I am directed by the board of directors of the school township of....., in the county of....., state of Iowa, to certify that the voters of subdistrict No..... of said district, at a meeting held....., 189.., voted that.....dollars be raised on the property within the subdistrict for schoolhouse fund.

....., 189.. .....

Secretary.

NUMBER 26.—SECTION 2768.

TREASURER'S ACCOUNT.

....., TREASURER, *in account with teachers' (schoolhouse or contingent) fund.* DR.

Sept. 28, 189..	To cash received of county treasurer, semi-annual apportionment	$ 270.00
Oct. 5, 189..	To cash received of county treasurer, district tax	75.00
Jan. 4, 189..	To cash received of county treasurer, district tax	150.00
April 5, 189..	To cash received of county treasurer, district tax	197.00
April 5, 189..	To cash received of county treasurer, semi-annual apportionment	135.00
July 5, 189..	To cash received of county treasurer, district tax	100.00

....., TREASURER, *in account with teachers' fund.* CR.

Oct. 13, 189..	By cash paid James Hogan, on order No. 1	$ 136.00
Oct. 13, 189..	By cash paid Sarah Smith, on order No. 3	89.00
Nov. 14, 189..	By cash paid Nicholas Hoover, on order No. 4	135.00
May 3, 189..	By cash paid Louisa Martin, on order No. 7	82.00
May 4, 189..	By cash paid Jas. M. Higgins, on order No. 10	115.00
May 4, 189..	By cash paid Stephen Phelps, on order No. 11	175.00
May 5, 189..	By cash paid Amelia Mason, on order No. 13	95.00

NUMBER 27.—SECTION 2771.

CERTIFICATE OF APPOINTMENT.

To.....:

You are hereby notified that at a meeting of the board of directors of the ....., in the county of....., state of Iowa, on the..... day of....., 189.., you were appointed.....of said.....to fill a vacancy occasioned by the.....of..... .....

....., 189.. .....

Secretary.

NUMBER 28.—SECTION 2773.

DEED FOR SCHOOLHOUSE SITE.

Know all men by these presents: That we, ..., and ....., h....., of the county of....., state of Iowa, in consideration of the sum of.....dollars in hand paid, do hereby sell and convey unto the..... ....., in the county of....., state of Iowa, the following described premises, situated in the county of....., state of Iowa, to-wit: (*Here describe the premises.*)

And we do hereby covenant with the said.....that we are lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to the said premises against the lawful claims of all persons whomsoever.

.....

.....

Signed this.....day of....., 189..

STATE OF IOWA, }
.....county. } SS.

On this.....day of....., 189.., before me, a notary public in and for said county, personally came.....and....., h.....,

personally to me known to be the identical persons whose names are affixed to the above deed, for the purposes therein expressed.

Witness my hand and notarial seal this.....day of....., 189..

[L. S.]

.....

Notary Public.

NUMBER 29.—SECTION 2773.

LEASE OF SCHOOLHOUSE SITE.

Know all men by these presents: That....., of the county of....., state of Iowa, for the consideration hereinafter mentioned, does hereby lease unto....., president of the board of directors of the....., in the county of....., state of Iowa, or his successor in office, for the use of said.....for school purposes, the following described premises, situated in the county and state aforesaid, to-wit: (*Here describe the lot or parcel of ground*) together with all the privileges thereto belonging, for the term of.....from the.....day of....., 189..

The said.....president as aforesaid, or his successor in office, hereby agrees to pay the said.....for the use of said premises, the.....rate of.....dollars to be paid at the expiration of this lease.

In testimony whereof we have hereunto subscribed our names this.....day of....., 189..

Signed in duplicate.

.....

.....

President

NUMBER 30.—SECTION 2778.

CONTRACT BETWEEN BOARD AND TEACHER.

This contract between....., a teacher of ....county, Iowa, and....., president board of directors of the....., in the county of ....., state of Iowa, witnesseth:

That the said.....agrees to teach the public school in.....of said district for the term of..... weeks, commencing on the.....day of....., 189.., and well and faithfully to perform the duties of teacher in said school, according to the law, and the rules legally established for the government thereof, including the exercise of due diligence in the preservation of the school buildings, grounds, furniture, apparatus, and other school property.

In consideration of said services, the said....., as president of the board, in behalf of said.....agrees to pay the said.....the sum of.....dollars a month for.....school months, at the end of.....

Witness our hands this.....day of..... 189..

.....

Teacher.

.....

President.

NUMBER 31.—SECTION 2779.

PROPOSALS FOR ERECTION (OR REPAIR) OF SCHOOLHOUSE.

Notice is hereby given that the proposals for the erection (*or repair*) of a schoolhouse in the....., in the county of....., will be received by the undersigned, at his office in.....(where plans and specifications may be seen), until 1 o'clock p. m.,....., 189.., at which time the contract will be awarded to the lowest responsible bidder. The board reserves the right to reject any or all bids.

....., 189.. .....

Secretary.

NUMBER 32.—SECTION 2779.

CONTRACT FOR BUILDING A SCHOOLHOUSE.

Contract made and entered into between....., of the county of....., state of Iowa, and....., in behalf of the ....., in the county of....., state of Iowa, and his successors in office.

In consideration of the sum of.....dollars, to be paid as hereinafter specified, the said.....hereby agrees to build a schoolhouse, and to furnish the material therefor, according to the plans and specifications for the erection of said house hereto appended, at..... .... in said..... The said house is to be built of the best material in a substantial, workmanlike manner, and to be completed and delivered to the said ....., or his successors in office, free from any lien for work done or material furnished, on or before the.....day of..... 189.. And in case the said house is not finished by the time herein specified, the said..... shall forfeit and pay to the said..... or his successors in office, for the use of said....., the sum of .....dollars, and shall also be liable for all damages that may result to said.....in consequence of said failure.

The said....., or his successors in office, in behalf of said ....., hereby agrees to pay the said.....the sum of.....dollars when the foundation of said house is finished; and the further sum of.....dollars when the walls are up and ready for the roof; and the remaining sum of.....dollars when the said house is finished and delivered as herein stipulated.

It is further agreed that this contract shall not be sublet, transferred, or assigned, without the consent of both parties.

Witness our hands this.....day of....., 189..

.....

Contractor.

.....

President.

NUMBER 33.—SECTION 2779.

BOND FOR PERFORMANCE OF CONTRACT.

Know all Men by these Presents: That we,....., as principal, and.....and.....as sureties, of the county of ....., state of Iowa, are held and firmly bound unto the ....., in the county of....., state of Iowa, in the penal sum of.....dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators and assigns, jointly, severally and firmly by these presents.

The condition of the above obligation is such that, whereas the said.....
.....has this day entered into a written contract with.....,
as president of the board of directors of the....., in the county
of....., state of Iowa, and his successors in office, for the erection
and completion of a schoolhouse in said....., by the.....
day of....., 189.., according to the plans and specifications for the
construction of said house appended to said contract.

Now, therefore, if the said.....shall faithfully and
fully comply with all the stipulations of said contract, then this obligation shall
be void, otherwise remain in full force and virtue in law.

In testimony whereof we have hereunto subscribed our names this.....
day of....., 189..

.....
Principal.

.....
.....
.....
Sureties.

NUMBER 34.—SECTION 2785.

LIST OF PARENTS AND CHILDREN, KEPT BY DIRECTOR.

PARENTS OR GUARDIANS.	NAMES OF CHILDREN.	SEX.	AGE.
John Smith.....	Peter Smith.....	Male.....	10 years.
	Eliza Smith.....	Female....	12 years.
James Jones.....	William Jones.....	Male.....	8 years.
	Charles Peters (ward)....	Male.....	15 years.
Anna Byron.....	James Byron.....	Male.....	12 years.

NUMBER 35.—SECTION 2789.

TEACHER'S DAILY REGISTER.

Register of the school taught in subdistrict No....., of the school township of....., county of....., state of Iowa, for the term commencing May 18, 189.., and closing....., 189..

....., Teacher.

PUPILS.			MAY.										JUNE.										BRANCHES STUDIED.										
			DAY OF MONTH.																														
Number.	NAME.	Age.	M., 18.	T., 19.	W., 20.	Th., 21.	F., 22.	Weekly summary.	M., 25.	T., 26.	W., 27.	Th., 28.	F., 29.	Weekly summary.	M., 1.	T., 2.	W., 3.	Th., 4.	F., 5.	Weekly summary.	Total attendance in days.	Orthography.	Reading.	Writing.	Mental Arithmetic.	Written Arithmetic.	Geography.	Grammar.	Physiology.	U. S. History.	Stimulants and narcotics.	
1	Peter Smith	10	E		10e /			4·5	X		15e			4	7					5	13·5	*	*	*	*		*				*	
2	Eliza Smith	12	E				5e /	4·5					/	4·5	/	/	X			3	12	*	*	*	*	*	*	*	*	*	*	
3	William Jones...	8	E			X		4		6				5		7				5	14	*	*	*	*						*	
4	Charles Peters...	15	E					5						5						5	15	*	*	*	*	*		*			*	

NOTE—The board should supply each school room in the district with a bound copy of school register. In the above form, E indicates the date of entrance; \, absence in the forenoon; /, absence in the afternoon; 20, twenty minutes late in the forenoon; 10e, ten minutes late in the afternoon, excused. The absence of marks indicates that the scholar was present the entire day. Absence at roll-call is indicated by a dot, which is afterward changed by figures, or a diagonal mark, as the circumstances require; * indicates branch studied.

I hereby certify that the above is a faithful and correct register of said school.

....., *Teacher.*

NUMBER 36.—SECTION 2789.

TEACHER'S TERM REPORT.

Register of the school taught in subdistrict number....., of the school township of....., in the county of....., state of Iowa, for the term commencing on the 18th day of May, 189.., and ending....., 189..

PUPILS.			ATTENDANCE IN DAYS FOR WEEKS COMMENCING—					Total attendance in days.	BRANCHES STUDIED.									
No.	NAME.	Age.	May 18.	May 25.	June 1.	June 8.			Orthography.	Reading.	Writing.	Arithmetic.	Geography.	Grammar.	Physiology.	U. S. History.	Stim. and narcotics.	
1	Peter Smith.....	10	4.5	4	5				*	*	*		*				*	
2	Eliza Smith.....	12	4.5	4.5	3				*	*	*	*	*	*	*	*	*	
3	William Jones.....	8	4	5	5				*	*	*						*	
4	Charles Peters.....	15	5	5	5				*	*	*	*		*			*	

I hereby certify that the above is a faithful and correct register of said school.

.....

Teacher.

NUMBER 37.—SECTION 2803.

NOTICE PERMITTING ATTENDANCE FROM ANOTHER DISTRICT.

To.....Secretary of the Board of Directors of the.....:

Notice is hereby given that..... and....., children residing in the....., have been granted permission by the board and county superintendent to attend school in....., commencing on the..... day of....., 189.., for a term of.....months.

....., 189.. .....

President.

.....

Secretary.

NUMBER 38.—SECTION 2808.

NOTICE OF SEMI-ANNUAL APPORTIONMENT.

OFFICE OF COUNTY AUDITOR,

....., 189..

To....., President of the.....

You are hereby notified that according to the semi-annual apportionment made this day, as provided by section 2808, the sum of.....dollars is due the

...., in the county of....., state of Iowa, for which I hand you herewith my warrant on the county treasurer.

.....
County Auditor.

NUMBER 39.—SECTION 2809.

CERTIFICATE OF ELECTION OF COUNTY SUPERINTENDENT.

OFFICE OF COUNTY AUDITOR,
....., 189..

I hereby certify that.....was elected to the office of county superintendent, for the term commencing January....., 189..

His postoffice address is....., Iowa.

.....
County Auditor.

NUMBER 40.—SECTION 2809.

CERTIFICATE OF QUALIFICATION OF COUNTY SUPERINTENDENT.

OFFICE OF COUNTY AUDITOR,
....., 189..

I hereby certify that.....has duly qualified for the office of county superintendent for the term commencing January....., 189..

His postoffice address is..... ....., Iowa.

.....
County Auditor.

NUMBER 41.—SECTION 2810.

NOTICE OF SCHOOL TAX COLLECTED.

OFFICE OF COUNTY TREASURER,
....., 189..

To....., *President of the Board of Directors of the* .....

You are hereby notified that the amount now collected and due the..... ....., in.....county, state of Iowa, is:

$.....teachers' fund.
$.....schoolhouse fund.
$.....contingent fund.

.....
County Treasurer.

NUMBER 42.—SECTION 2815.

APPLICATION FOR APPOINTMENT OF REFEREES.

To....., *Superintendent of*.....*county:*

In accordance with the action of the board of directors of the..... ....., you are hereby requested to appoint three disinterested persons to inspect, and assess the damages which the owner will

sustain by appropriating for school purposes, the following described real estate:
.....
.....
.....
....., 189.. .....
President.
.....
Secretary.

NUMBER 43.—SECTION 2815.

APPOINTMENT OF REFEREES.

To....., ...*and*.....

You are hereby appointed and constituted a board of referees, under the provisions of section 2815, to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate:
.....
.....
.....
in....., in the county of....., state of Iowa, containing one acre of land, exclusive of highway.

You will therefore, on the.....day of....., 189.., at.....o'clock....m., proceed to examine the real estate above described, and assess, under oath, the cash damages which the owner will sustain by the appropriation of said land for school purposes, and immediately thereafter report to me in writing the amount of said damages.

....., 189.. .....
County Superintendent.

OATH OF REFEREES.

We,.....,.....and.....
do solemnly swear that we will well and truly, and to the best of our ability perform all of the duties imposed upon us by the foregoing commission.
.....
.....
.....

Subscribed and sworn to before me by....., ...
and....., this.....day of....., 189..
.....
Notary Public.

NUMBER 44.—SECTION 2815.

NOTICE TO OWNER OF REAL ESTATE.

To....., ...*county:*

You are hereby notified that I have this day appointed referees to assess the damages which the owner will sustain by the appropriation for school purposes of the following described real estate.....
.....
.....
.....
Said referees will meet at the above described real estate on the.....day of ....., 189.., at....o'clock....m., and assess said damages as provided by law.

....., 189.. .....
County Superintendent.

NUMBER 45.—SECTION 2815.

REPORT OF REFEREES.

To....., *Superintendent of*.....*county:*

We, the undersigned, appointed to assess the damages which the owner will sustain by the appropriation, for school purposes, of the following described real estate.....
.....
.....
do hereby report that we have on this.....day of....., 189.. carefully examined said described real estate and have assessed the damages at .....dollars.

.....189..

.....
.....
.....
Referees.

NUMBER 46.—SECTION 2815.

NOTICE OF ASSESSMENT OF DAMAGES.

To....., ...*county:*

You are hereby notified that referees were appointed to assess the damages which the owner would sustain by the appropriation for school purposes of the following described real estate.....
.....
.....
.....
and that said referees met at said premises on the.....day of..... 189.., and assessed said damages at.....dollars, as shown by their report on file in my office.

....., 189..

.....
County Superintendent.

NUMBER 47.—SECTION 2818.

AFFIDAVIT OF APPEAL.

STATE OF IOWA, }
.....county. } ss.

.....
v.
SCHOOL TOWNSHIP OF.....

I, ..., being duly sworn, on oath, say: that on the.....day of....., 189.., the board of directors of said school township rendered a decision (or made an order) whereby (*here state facts showing affiant's interest in the decision, and the injury to that interest*); that said board in rendering the decision (or making the order) aforesaid, committed errors as follows. (*Here state the errors charged.*)

.....

Subscribed and sworn to by.....before me, this.....day of....., 189..

.....
Notary Public.

NUMBER 48.—SECTION 2819.

NOTICE OF APPEAL.

STATE OF IOWA, ...county. } ss.

..... }
v. }
SCHOOL TOWNSHIP OF..... }

To....., *Secretary Board of Directors of the School Township of*.....

You are hereby notified that.....has filed in my office an affidavit alleging that said board of directors, on the.....day of....., 189.. made a decision (*or an order*) whereby (*here describe the decision or order so that the secretary may identify it*), and claiming an appeal therefrom. You are therefore required within ten days after receiving this notice, to file in my office a complete transcript of the record of the proceedings of the board relating to said order, together with copies of all papers filed with you pertaining to said action appealed from.

....., 189.. .....

County Superintendent.

NUMBER 49.—SECTION 2819.

CERTIFICATE TO SECRETARY'S TRANSCRIPT.

I, ..., secretary of the board of directors of the school township of....., in the county of....., state of Iowa, hereby certify that the foregoing is a correct and complete transcript of the record of all proceedings of the board and of all papers filed relating to the case.....*v*.....

....., 189.. .....

Secretary.

NUMBER 50.—SECTION 2819.

NOTICE OF HEARING OF APPEAL.

STATE OF IOWA, ...county. } ss.

..... }
v. }
SCHOOL TOWNSHIP OF..... }

To.....

You are hereby notified that there is on file in this office a transcript of the proceedings of the board of directors of the school township of..... at a meeting held on the.....day of....., 189.., in relation to (*here describe the decision or order appealed from*), from which appeal has been taken; and that the said appeal will be heard before me at.....on the..... day of....., 189.., at.....o'clock....m.

....., 189.. .....

County Superintendent.

NUMBER 51.—SECTION 2820.

CERTIFICATE TO COUNTY SUPERINTENDENT'S TRANSCRIPT.

I, ..., superintendent of..... county, state of Iowa, hereby certify that the foregoing is a correct and complete

transcript of the records of all proceedings had, testimony given and papers filed in my office, and my rulings thereon, also of my decision in the case.....
.....*v*.....
....., 189. .....

County Superintendent.

NUMBER 52.—SECTION 2824.

BOND FOR SALE OF BOOKS AND SUPPLIES.

Know all Men by these Presents:

That we, ..., of the county of..... as principal, and.....and....., as sureties are held and firmly bound unto the.....in the county of....., state of Iowa, in the penal sum of.....dollars, for the payment of which we bind ourselves, our heirs, executors and administrators, firmly by these presents.

The Condition of the Foregoing Obligation is, That, whereas, the above named ....., is to take charge of, care for, and account for, all text-books and supplies, and to return all moneys received from the sale of such books and supplies to the contingent fund of said district; now, if the said .....shall promptly pay over to the treasurer of the district all money which may come into his hands from the sale of books and supplies, and shall account in full at any time for all books and supplies coming into his hands, and shall deliver to any person or officer authorized to receive the same, all books and supplies unsold, and make full settlement as required by law, then this bond to be void, otherwise in full force.

Signed this.....day of....., 189..

.....
.....
.....

NUMBER 53.—SECTION 2828.

NOTICE TO PUBLISHERS OF TEXT-BOOKS.

Notice is hereby given that in accordance with law, bids will be received up to.....of the.....day of....., 189.., by.....at.....for the following text-books and supplies for the use of the schools of said.....

	Approximate Number Needed for First Supply
Readers, First to Fifth, inclusive.....	
Arithmetics, two books.....	
Speller.....	
Geographies, two books.....	
United States History.....	
Grammar.....	
Language Lessons.....	
Copy books, 1–5 inclusive.....	
Physiology.....	
.....	
.....	

Approximate number in attendance upon the schools of said.....
.....during the year 189.., ...

Samples of all text-books included in any bid must be deposited and remain in the office of the county superintendent.

The board reserves the right to reject any or all bids, or any part thereof.

.....*President.*

.....*Secretary.*

....., 189..

NUMBER 54.—SECTION 2830.

BOND OF CONTRACTOR TO FURNISH TEXT-BOOKS.

Know all Men by these Presents: That we, ...of ....., as principal, and..... ....., as sureties, are held and firmly bound unto the .....in the penal sum of..... to be paid to the said.....for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

The conditions of the above obligation are such that if the above bounden .....shall well and truly fulfill and comply with all the obligations of their contract made on the.....day of.....189.., with the aforesaid..... ..... providing for the furnishing of school text-books at prices and on conditions set forth in their said contract, a copy of which said contract is hereto attached and made a part hereof, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof we have hereunto subscribed our names this..... day of....., 189..

....
Principal.

.....

.....
Sureties.

NUMBER 55.—SECTION 2831.

PETITION FOR COUNTY UNIFORMITY.

To..... County Superintendent:

We, the undersigned, holding the office of school director, ask for the adoption of a uniform series of text-books in the schools of this county, and that you take steps to submit the question to the electors of the county, at the annual school meeting in March, as provided for by law.

NAMES.	DISTRICT NAME.	TOWNSHIP.
.....	.....	.....
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DECISIONS

IN

APPEAL CASES,

Compiled for the Use of School Officers.

EDITION OF 1897.

HENRY SABIN,
Superintendent of Public Instruction.

PREFACE.

For this compilation, typical cases have been selected. As usual, decisions are given entire. Well-settled conclusions are thus repeated, the case being included to present some additional particular. Some cases may also contain references not in conformity with the new law. The index after the decisions will be found valuable for study and reference.

Not all actions may be appealed from. If a money consideration is the principal issue, appeal will not lie. A matter involving the validity of district organization may be determined only in the courts. If the validity, interpretation, or enforcement of a contract is the leading feature, a court must hear the case. The right to hold an office must be decided in court. Appeal may not be taken from an action of the voters; an application to a court is the legal remedy.

Familiarity with the contents of this volume may frequently enable a board to foresee a probable grievance, and afford it the opportunity by timely deliberation and wise action to remove or lessen the possibility of an appeal. In the same way, persons aggrieved may first satisfy themselves whether the risks and uncertainties of an appeal seem to be overcome by the strong probability that a reversal of the order of the board will be secured. If an appeal is brought without good reason or if the appeal is not sustained, the county superintendent is required to tax the costs to the appellant.

The result of an appeal is seldom satisfactory to all the parties. It is always desirable to avoid an appeal if the same conclusions can be reached by some less objectionable method. A careful study of the legal principles contained in the following decisions will supply a ready answer to many questions likely to arise, thus often entirely obviating the necessity for an appeal.

HENRY SABIN,

Superintendent of Public Instruction.

October 1, 1897.

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SCHOOL LAW DECISIONS.

S. L. CURRY v. DISTRICT TOWNSHIP OF FRANKLIN.

Appeal from Decatur County.

COUNTY SUPERINTENDENT. Has no jurisdiction of an appeal until an affidavit is filed in his office. The appeal must be taken by affidavit.

AFFIDAVIT. An affidavit is a statement in writing of the errors complained of, signed and made upon oath before an authorized magistrate.

JURISDICTION. An application for an appeal filed within thirty days from the act complained of will not give the county superintendent jurisdiction of the case.

NOTICE. The county superintendent should not issue notice of final hearing until the transcript of the district secretary has been filed.

TESTIMONY. Unless obviously immaterial, testimony offered should be admitted and given such weight as it merits.

DISCRETIONARY ACTS. Should not be disturbed except upon evidence of unjust exercise of discretion.

December 16, 1867, at a special meeting of the board, a vote to change the boundaries of subdistricts so as to form a new subdistrict in accordance with the prayer of petitioners, resulted in a tie. From this virtual refusal to act, S. L. Curry appealed to the county superintendent, who on the 31st of the same month formed a new subdistrict. Appellant alleges in his affidavit that the county superintendent assumed jurisdiction of this case without warrant of law, that there never was "at any time an affidavit or any other statement in said appeal case filed in the office" of the superintendent, hence the want of jurisdiction.

The "act to provide for appeals," section two, provides that "The basis of proceeding shall be an affidavit, filed by the party aggrieved, with the county superintendent, within the time allowed for taking the appeal." An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate. A county superintendent can have no proper jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. The affidavit setting forth "the errors complained of in a plain and concise manner," must be in his hands before he is justified in commencing proceedings. The decision of the superintendent recites that the affidavit was filed December 21, which might be taken as conclusive, if it was not contradicted by the record. The transcript shows that said affidavit was not subscribed and sworn to until December 28, hence we do not clearly see how it could have been filed on the 21st.

December 24, four days before the affidavit was made, and which appellant alleges was never filed with the superintendent, said superintendent gave notice to the parties that the hearing would take place on the 30th. This proceeding, as an appeal case, was entirely unauthorized by law, and as he commenced proceedings in disregard of the plain provisions of law and without legal jurisdiction, his decision is annulled. It may be said, and not without authority, that as both parties responded to the notice, and came before the superintendent, that he thereby acquired jurisdiction, but we feel unwilling to sanction disregard of law by approving such great irregularities.

Without touching the real merits of the question at issue, the formation of a new subdistrict, which we are willing to leave to the local authorities, we refer briefly to three points of law raised by appellants.

The county superintendent should not issue notice of final hearing until both the affidavit and the transcript of the secretary have been filed in his office.

Though the change of subdistrict boundaries by the board is a discretionary act, it may be reviewed by the county superintendent, on appeal, but the decision of the board should not be disturbed unless said discretionary power has been abused or exercised unjustly.

The county superintendent should have received the remonstrances offered on trial in evidence, and exercised his judgment as to their weight and value.

REVERSED.

D. FRANKLIN WELLS,

March 26, 1868. *Superintendent of Public Instruction.*

ELIAS SIPPLE v. DISTRICT TOWNSHIP OF LESTER.

Appeal from Black Hawk County.

TESTIMONY. At the hearing of an appeal, it is competent for the county superintendent, upon his own motion, to call additional witnesses to give testimony.

RECORDS. In the absence of the allegation of fraud, testimony to contradict or impeach the records of the district cannot be received.

RECORDS. The board may at any time amend the record of the district, when necessary to correct mistakes or supply omissions. And it may upon proper showing be compelled by mandamus to make such corrections.

AFFIDAVIT. The affidavit answers its leading purpose if it sets forth the errors complained of with such clearness that the proper transcript may be secured.

At the regular meeting of the board held September 16, 1867, attended by four of the seven members, motions were made and seconded for the creation of two new subdistricts whose boundaries were described in the motions. In regard to the action on these motions the record of the secretary contains merely the word "carried." At a special meeting held February 15, 1868, the action of the board in September in relation to the formation of new subdistricts was "reconsidered" and "rescinded." From the February action Elias Sipple appealed to the county superintendent. During the progress of the hearing, which took place March 20, 1868, the county superintendent called upon one of the four members that attended the September meeting, who testified that he did not vote for the motion to create a new subdistrict. As it thus appeared that the new subdistricts were not established by a vote of a majority of all the members of the board, as required by law, and as said September action was rescinded at a full meeting of the board in February, the county superintendent, considering the formation of the subdistricts illegal and void, dismissed the appeal. From this decision Barney Wheeler appeals.

Appellant alleges substantially that the county superintendent erred as follows: In himself calling a witness to give testimony; in receiving testimony to impeach the district record, which is claimed to be valid and binding after thirty days; in dismissing the appeal; in not establishing the subdistricts.

The law requires the county superintendent to give a "just and equitable" decision, and as the calling of additional witnesses may sometimes enable him to discharge this duty more faithfully, his action in this respect is sustained.

The second error assigned really includes two distinct points, which will be considered separately; and first, in regard to the impeachment of the district record. The law provides for an annual meeting of the electors of the district township, and for semi-annual and special meetings of the board of directors; also that "the secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose." It is a general principle of

law that "oral evidence cannot be substituted for any instrument which the law requires to be in writing, such as records, public documents," etc. 1 Greenleaf's Evidence, §86. "It is a well settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced; and this rule applies as well to the transactions of public bodies and officers as to those of individuals." *The People v. Zeyst*, 23 N. Y., 142. In the case of *Taylor v. Henry*, 2 Pick., 397, the supreme court of Massachusetts held that an omission in the records of a town meeting could not be supplied by parol evidence. Chief Justice Shaw, in discussing the case, said that it would be "dangerous to admit such a proof." Mr Starkie, in his valuable treatise on evidence, says: "Where written instruments are appointed either by the immediate authority of the law or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy to exclude any inferior evidence from being used either as a substitute for such instruments or to contradict or alter them; of principle, because such instruments are, in their own nature and origin, entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience, if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, page 995, volume III, 3d Am. Ed.

The reason of the rule upon which the courts agree with such entire unanimity applies with force in the case now under consideration. The records of the district and board meetings contain a statement of the regulations adopted, and the acts done in the exercise of the powers with which the respective bodies are invested by the law. They present to all the citizens of the district township, in a permanent form, certain and definite information which could be obtained, with equal certainty, in no other way. Memory is defective, but the secretary records the transactions as they occur. The actors change from year to year, but the record is permanent. And though the admission of oral testimony to alter a record or to supply an omission therein might sometimes promote the attainment of justice, the prevalence of such a practice would result in more evil than good It is held, therefore, that in the absence of alleged fraud the county superintendent errs, in admitting parol evidence to contradict or impeach the record of the September meeting of the board.

In regard to the other part of the second point a few words will suffice. The counsel for appellant urges that though the record of the September meeting was imperfect, the lapse of thirty days made the record valid and binding upon the district. It is true that the right to take an appeal to the county superintendent expires after thirty days, but I am unable to see how the lapse of time will validate what was before invalid. The secretary is the proper custodian of the records of the school district, and before the record of the proceedings of the board has been approved or adopted by the board, the secretary may amend them by supplying omissions, or otherwise correcting them. After they have been approved they may be amended and corrected by direction of the board, even after the lapse of thirty days. In Massachusetts a town clerk is permitted to amend the record in order to supply defects, even after a suit involving a question respecting them has been commenced. I am of the opinion that if the secretary or board of directors decline to make necessary corrections in the record, that a party interested may proceed by mandamus to compel the correction. If the record is to be impeached, it must be, in the absence of fraud, by a direct proceeding instituted for that purpose, and not by a collateral or indirect method. *The People v. Zeyst*, 23 N. Y., 147-8.

The district record in this case is not as full as it might with propriety be. The law provides that the boundaries of subdistricts shall not be changed except

by the vote of a majority of the members of the board. The record fails to show that this requirement of the law was complied with at the September meeting. The secretary says that the motion to redistrict "carried." This is his opinion, but he fails to give the fact upon which it is based. Four of the seven members were present, but he does not say who, or how many voted for the change. Properly this should have been stated. When, however, the district record declares that a motion was "carried," the law will presume that it was carried in accordance with the requirements of the statute; though there is reason to believe that the presumption in this instance is a violent one. It follows that there was no legal evidence that the subdistricts were not established in accordance with law; hence, the conclusion is inevitable that the county superintendent erred in dismissing the appeal for the cause assigned.

At the commencement of the trial and again during its progress, the defendant moved the county superintendent to dismiss the case on account of the insufficiency of the affidavit. The affidavit of Mr. Sipple is not as full as it is usual to make affidavits in such cases, yet it "set forth the errors complained of" with such plainness and conciseness as enabled the county superintendent to obtain the necessary transcripts, and this is all the law really requires. It has not been customary heretofore to enforce any particular form of affidavit, and the superintendent's ruling refusing to dismiss on defendant's motion is sustained.

As the testimony appears not to have been all in when the case was dismissed by the county superintendent, no opinion can be given in regard to the propriety or necessity of establishing the proposed new subdistricts. The case is therefore returned to the county superintendent, who will proceed with the hearing, first allowing a reasonable time for the correction of the district record or for the enforcement of its correction should such correction be deemed necessary by either of the interested parties. Should the district record be amended so as to show conclusively that the said subdistricts were not legally formed at the said meeting in September, it will follow that the said subdistricts never had a legal existence, and that the plaintiff could not be aggrieved by the action of the February meeting, hence the county superintendent will determine the case in favor of the appellee. Should said record not be amended, or should it be amended so as to show clearly that said subdistricts were established in all respects in conformity with law, the question of establishing the new subdistricts, or more properly retaining their organization, will be determined upon its merits.

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

July 23, 1868.

E. J. MINER v. DISTRICT TOWNSHIP OF CEDAR.

Appeal from Floyd County.

CONTESTED ELECTION. The proper method of determining a contested election for school director is by an action brought in the district court.

ELECTION. The certificate of the officers of the subdistrict meeting is the legal evidence of election as subdirector, and as a general rule a board of directors is justified in declining to recognize a person as a member of the board until he produces such certificate.

EVIDENCE. Where the law requires the evidence of a transaction to be in writing, oral evidence can be substituted only if the writing cannot be produced.

QUO WARRANTO. The remedy of a person denied possession of an office to which he has been chosen, is an action in court.

At the regular meeting of the board in March, 1868, E. J. Miner appeared and filed his oath of office as subdirector of subdistrict number three, and claimed recognition as a member of the board. The said Miner failed to present the certificate of the officers of the subdistrict meeting, or any other evidence of his

election except his own verbal statement. It was alleged in the board that he was not legally elected. Under these circumstances, the board refused him a seat and recognized his predecessor as holding over. From this order the said Miner appealed to the county superintendent, who, after a full hearing of the manner in which the election was conducted, reversed the order of the board, and directed that the said Miner should be recognized as subdirector of subdistrict number three, and as a member of the board of directors. From this decision an appeal is taken by A. J. Sweet, president of the board. The above are but a small portion of the facts presented in the well arranged transcript of the county superintendent, but yet all that are material to the issues involved.

The case presented by these facts is similar to that of *Ockerman v. District Township of Hamilton*, page 77, School Law Decisions of 1868, and must be governed by the same principles. It was there held that the only proper way of determining a contested election or the right of exercising any public office or franchise, is by an action in the nature of *quo warranto* brought in the district court. It seems unnecessary to repeat the arguments there used. Reference is made to that case as well as to the 19 Iowa, 199; 18 Iowa, 59; 16 Iowa, 369; 17 Iowa, 365; and the other cases there cited. The principle involved in the preceding references was recognized by the county superintendent, when he said in his decision that "the board of directors has no jurisdiction to inquire into the legality of the election of its members." When this just conclusion was reached, the case should have been dismissed, for the county superintendent can do on appeal only what the board itself might legally have done.

The county superintendent held that as the president of the subdistrict meeting refused to sign a certificate of election for the said Miner, that the board might receive other evidence of his election. In this the county superintendent departed from well established legal principles. The school law provides that at the meeting of the electors of the subdistrict on the first Monday in March, "a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the subdirector elect." It is a well settled rule, that where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted when the writing can be produced; this rule applies alike to transactions of public bodies, officers, and individuals.

There can be no doubt that the law contemplates that the certificate of the officers of the subdistrict meeting shall be the legal passport to a seat in the board, and that, as a general rule, a board of directors is justified in declining to recognize a person as a member of the board until such certificate is produced. If the certificate has been given and lost, the accident may be remedied by other testimony. If illegally withheld, the officer may be coerced by mandamus to furnish it. If it has been fraudulently given, the law still provides a remedy.

By the light of the previous principles, it is evident that when, under the circumstances, the county superintendent proceeded to investigate the rights of the plaintiff as a school director, he exceeded his jurisdiction, and that his decision must therefore be overruled. The law requires that the plaintiff, Miner, shall seek his remedy in the courts. The decision of the county superintendent is therefore reversed and the case dismissed. REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

July 29, 1868.

N. R. HOOK v. INDEPENDENT DISTRICT OF FREMONT.

Appeal from Mahaska County.

SCHOOL PRIVILEGES. Are not acquired by temporary removal into a district for the purpose of attending school.

At a meeting of the board an order was made excluding one George Check from school. From this order Dr. N. R. Hook, with whom the boy was at the

time living, appealed to the county superintendent, who affirmed the order of the board, and Hook again appealed.

The ground upon which the boy was debarred from school, was that he was not a *bona fide* resident of the district, and this is fully sustained by the circumstances of the case as shown by the weight of evidence as adduced before the county superintendent. The apparent primary purpose of George Check in going to live with Dr. Hook, was that he might attend the school at Fremont, and after the term of school should expire, his further continuance at Hook's would be uncertain. He did not go there with the intention of remaining, but the intention to return to his father's house seems to have been manifested in the contract or agreement made with Hook.

Counsel for appellant argues that the law should not be technically construed, but that it should receive a liberal construction, and in this he is correct. It should receive such a construction as that all the youth of the state, without regard to race or condition in life, can, with equal facility, participate in the benefits of our free schools. There is evidence that the schools in Fremont are so crowded that many of the youth of the district are unable to gain admission, and the law gives to them the prior claim. The board should see that the children of the district are first accommodated, and then, if not detrimental to the interests of the school, it may admit, in its discretion, those from outside districts upon such terms as it may agree.

Believing that the county superintendent properly sustained the board of directors, his decision is hereby AFFIRMED.

A. S. KISSELL,

May 1, 1870. *Superintendent of Public Instruction.*

Z. W. REMINGTON v. DISTRICT TOWNSHIP OF BOOMER.

Appeal from Pottawattamie County.

JURISDICTION. The county superintendent does not have jurisdiction of cases involving a money demand.

SCHOOL ORDERS. When improperly issued, a proper remedy is injunction.

On the 12th day of October, the board met in special session and made a settlement with one L. S. Axtell, who was the contractor for the erection of certain schoolhouses in said district township. From the action of the board, Z. W. Remington appealed to the county superintendent, who dismissed the appeal upon the ground that the settlement with Axtell was for a money demand, and therefore involved a question over which he could exercise no jurisdiction. Remington again appeals.

If there was anything wrong in the action of the board issuing orders in favor of Axtell for the payment of his claim for building the schoolhouses that would render them invalid, his remedy, if any, would have been by injunction to restrain the payment of such orders, or by some other proper action in the civil courts, and not by appeal to the county superintendent, as the latter tribunal is not clothed by the statute with authority to inquire into or determine the validity of school orders. The county superintendent, therefore, very properly decided to dismiss the appeal, and his order in the case is hereby AFFIRMED.

A. S. KISSELL,

May 17, 1870. *Superintendent of Public Instruction.*

W. D. PECK *et al.* v. DISTRICT TOWNSHIP OF POLK.

Appeal from Jefferson County.

SUBDISTRICTS. Should be, if possible, compact and regular in form. In well populated district townships, two miles square is considered a desirable area.

SCHOOLHOUSE SITE. It is important that a schoolhouse site be located on a public road, and as near the center of the subdistrict as practicable.

It appears from the transcript in this case that the board, on the presentation of a petition from the majority of the inhabitants of subdistrict number eight, issued an order attaching a strip on the northeast from subdistrict number seven to number eight, relocating the schoolhouse site, and arranging for the removal of the schoolhouse from the present site to said new location. From this action of the board an appeal was taken to the county superintendent, who sustained the action of the board, and from his decision an appeal is taken to this tribunal.

The trial before the county superintendent developed that the board has in contemplation the redistricting of the entire township into subdistricts two miles square, and that the order providing for the change of boundaries in subdistrict number eight is the initiatory step in that direction. The subdistrict in question, previous to the order, had very irregular boundaries; and except that the district is too large for convenience without further change in the boundaries, there would seem to be every reason for attaching the strip from number seven. That being attached, the change of location and the removal of the schoolhouse to a site occupying the geographical center of the subdistrict with its changed boundaries, must follow of course. Besides this, there seems to be the additional good reason for the change of location for the schoolhouse site: the present site is not on a public road; the one in prospect is, and as all the territory is in a condition to be easily and rapidly settled, the new site will, with the additional change in contemplation, be the exact geographical center of the subdistrict.

The action of the board in this case is manifestly of a discretionary character, and I can see nothing in the testimony that would induce the belief that it has in any way exceeded its prerogative, or abused its discretion. The decision of the county superintendent is therefore AFFIRMED.

A. S. KISSELL,

February 4, 1871. *Superintendent of Public Instruction.*

W. P. DAVIS v. DISTRICT TOWNSHIP OF MADISON.

Appeal from Fremont County.

CONTRACTS. Made by a committee require the approval of the board in session.

SCHOOL FUNDS. The treasurer is the proper custodian of all funds, and may legally pay them out only upon orders specifying the fund upon which they are drawn and the specific use to which they are applied.

SUBDIRECTOR. The subdirector may expend money in his subdistrict only in the manner authorized by the board.

CLAIMS. Just claims against the district can be enforced only in the courts.

MANDAMUS. Is a remedy if the board refuses to carry out a vote of the electors.

SUBDISTRICT. A subdistrict is not a corporate body, and has no control of any public fund.

The electors on the 11th day of March, 1871, voted a tax of two and one-half mills on the taxable property of the district township for schoolhouse purposes, and directed that three hundred dollars of the amount thus raised should be used for the erection of a schoolhouse in subdistrict number nine.

March 20, 1871, W. P. Davis, subdirector of subdistrict number nine, was appointed a committee to build a schoolhouse in said subdistrict. The house having been completed, at a special meeting of the board held June 1, 1872, it was moved that the report of the committee be received, and the schoolhouse be accepted; also that the secretary be instructed to draw an order on the treasurer for three hundred dollars, for subdistrict number nine. Both motions were lost, from which action the said W. P. Davis appealed to the county superintendent, who on the 9th day of August, 1872, reversed the action of the board. The district township, through its president, W. H. Gandy, appeals.

The history of this case very fully illustrates the loose and irregular manner in which school officers too frequently transact official business. Section 15 of the School Laws provides that the board "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before erecting any schoolhouse they shall consult with the county superintendent as to the most approved plan of such building."

If the contract is made by a subdirector or committee of the board, it should in all cases be approved by the board before work is commenced.

A misapprehension often exists as to the manner in which school funds should be disbursed. The treasurer is the proper custodian of all funds belonging to the district township, and the law provides that he "shall pay no order which does not specify the fund on which it is drawn, and the specific use to which it is applied," that is, for work done, material furnished, or the like.

The board is also required to "audit and allow all just claims against the district, and no order shall be drawn on the district treasury until the claim for which it is drawn has been so audited and allowed." This rule applies equally where funds are voted by the district township for the purpose of building schoolhouses in particular subdistricts, also where taxes have been raised on the property of subdistricts in accordance with the proviso of section twenty-eight. Such funds, or so much of them as may be required to carry out the vote of the electors, should be devoted to the specific object for which they were voted, but the disbursement should in all cases be under the direction and authority of the board. Boards have no authority to give subdirectors money to use in their subdistricts for building schoolhouses or any other purpose, nor subdirectors to use money so received. A subdistrict is not a corporate body and has no control of any public fund.

If Mr. Davis has a just claim against the district township of Madison which the board refuses to allow, or if the board refuses to apply the amount voted by the electors to the specific object for which it was designed, the erection of a schoolhouse in subdistrict number nine, the civil courts only can furnish a means of redress.

REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

October 30, 1872.

W. J. MOODY v. H. H. BURRINGTON, COUNTY SUPERINTENDENT.

Appeal from Bremer County.

CERTIFICATE. The county superintendent may refuse to entertain a petition for the revocation of a teacher's certificate.

APPEAL. An appeal may be taken from the refusal of the county superintendent to investigate charges brought against a teacher.

DISCRETIONARY ACTS. The decision of the authority having original jurisdiction is entitled to much consideration.

A petition containing charges against a teacher was presented to H. H. Burrington, county superintendent, asking an investigation of the charges, and the revocation of her certificate. The county superintendent refused to make the investigation as requested by the petitioners, and W. J. Moody appeals.

The question whether an appeal will lie from the refusal of the county superintendent to investigate charges brought against a teacher, has not been to our knowledge before determined. Since it is held that an appeal may be taken from an action of the board refusing to perform a discretionary action, we see no reason why appeal will not lie from a similar action of the county superintendent.

In the case before us, statements testifying to the moral character and good reputation of the teacher are made by reliable and disinterested parties, who have been intimately acquainted with her for several years past; and it is believed

that, in no instance, is the judgment and discretion of a local tribunal entitled to more consideration than in this case. AFFIRMED.

ALONZO ABERNETHY,
July 10, 1873. *Superintendent of Public Instruction.*

J. W. RANDALL v. DISTRICT TOWNSHIP OF VIENNA.

Appeal from Marshall County.

SCHOOLHOUSE. The board may legally remove a schoolhouse from one subdistrict to another only by vote of the electors.

SCHOOLHOUSE. When the electors have voted to remove a schoolhouse from one subdistrict to another the board must execute such vote, and from its action in so doing no appeal can be taken.

INJUNCTION. The execution of a fraudulent vote of the electors may be prevented by a writ from a court of law.

At the district township meeting held on the second Monday in March, 1873, it was voted to remove the schoolhouse situated in subdistrict number four into subdistrict number three. On the 17th day of March the board ordered the removal of the schoolhouse, in accordance with said vote of the electors. From this action appeal was taken to the county superintendent, who reversed the action of the board The district township, through its president, appeals.

Section seven, School Laws of 1872, provides that the electors shall have the power "to direct the sale, or other disposition to be made of any schoolhouse;" also "to vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of the necessary schoolhouses for the use of the respective subdistricts." Section fifteen provides that the board "shall make all contracts, purchases, payments and sales necessary to carry out any vote of the district." Section sixteen provides that the board "shall fix the site for each schoolhouse."

From the law as above quoted we understand that the electors may vote a tax for the erection of a schoolhouse in any particular subdistrict, or may direct the removal of one already built, from a subdistrict, and that the board determines the site within a subdistrict, but has no authority to remove a schoolhouse from a subdistrict without affirmative action of the electors, such action, however, being taken, the board must execute their vote, if in accordance with law. From the action of the board in thus executing the vote of the electors no appeal can be taken. If the vote of the electors is contrary to law, its execution may be prevented by injunction, if unwise, the electors themselves must bear the consequences. REVERSED.

ALONZO ABERNETHY,
July 11, 1873. *Superintendent of Public Instruction.*

D. K. TAYLOR v. INDEPENDENT DISTRICT OF ELDON.

Appeal from Wapello County.

APPEAL. Appeal may not be taken from an action or order complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by previous action of the board.

APPEAL. A case whose main purpose is to determine the validity of an order on the district treasury, or the the equity of a claim, cannot be entertained on appeal to the county superintendent.

SCHOOL FUNDS. The courts of law alone can furnish an adequate remedy, if the law has been violated and the money of the district has been misappropriated.

From the transcript it appears that on the 3d day of December, 1873, the board passed an order authorizing the payment of five per cent commission for negotiat-

ing the district bonds, and on the same day another authorizing D. P. Stubbs to negotiate said bonds. On the 3d day of February, 1874, the board passed an order instructing the president and secretary to draw an order for $90 on the district treasury in favor of said D. P. Stubbs, for services rendered in negotiating said bonds, in accordance with the previous action of the board on December 3, 1873. From the action of the board in issuing said order of $90 this appeal was taken. The county superintendent dismissed the case, on the ground that it was an action authorizing the payment of money, and a decision thereon would be equivalent to rendering a judgment for money, which is prohibited by the provisions of section 1836. D. K. Taylor again appeals.

Appeal may be taken from any action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by a previous action.

The order appealed from in this case is not a new action of the board, but a necessary result of the order of December 3, 1873. If the first action was legal and proper, the last is both proper and necessary, the services having been performed. Any interested party might have appealed, at the proper time, from the action of December 3, 1873, authorizing the payment of five per cent commission for negotiating bonds or authorizing the appointment of an agent therefor. But the time for an appeal, thirty days, having expired, appeal cannot now be taken from the subsequent action, which is simply carrying out its previous action, and the terms of the contract made thereunder.

To determine the validity of an order on the district treasury, or the equity of a claim, is equivalent to the rendition of a judgment for money, and a case whose sole purpose is to determine this question cannot be entertained on appeal. The courts of law alone can furnish an adequate remedy, if the law has been violated, or the interests of the district have suffered by the making of contracts or the issuing of orders for money on the treasury. AFFIRMED.

ALONZO ABERNETHY,

May 5, 1874. *Superintendent of Public Instruction.*

E. WATSON v. DISTRICT TOWNSHIP OF EXIRA.

Appeal from Audubon County.

PUNISHMENT. The punishment of a pupil with undue severity, or with an improper instrument, is unwarrantable, and may serve in some degree, to indicate the animus of the teacher.

PUNISHMENT. In applying correction, the teacher must exercise sound discretion and judgment and should choose a kind of punishment adapted not only to the offense, but to the offender.

Charges were preferred against E. Watson for harsh and unreasonable punishment of a pupil, and upon investigation the teacher was discharged. From this action of the board he appealed to the county superintendent, who reversed its action, and the district appeals.

From the evidence it appears that the pupil upon whom the punishment was inflicted was a boy thirteen years of age, and that the offense was such that punishment was deserved. The instrument selected was a hickory stick, three-fourths of an inch in diameter at one end, and one-half inch at the other, and fifteen or eighteen inches long. The punishment was inflicted by striking upon the palm of the hand from eight to twelve strokes. It appears that the boy's hand was thereby disabled for some days.

It is alleged by the teacher that the punishment was inflicted for the good of the school, and that it was without malice on his part. We consider the selection of such an instrument for the punishment of a pupil injudicious, unwarrantable,

and dangerous, and that the consequences might be fraught with the gravest results, and that such selection may serve in some degree, to indicate the animus of the teacher.

REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

June 6, 1874.

SANFORD HARWOOD v. INDEPENDENT DISTRICT OF CHARLES CITY.

Appeal from Floyd County.

PUNISHMENT. The right of the parent to restrain and coerce obedience in children applies equally to the teacher, or to any one who acts in *loco parentis.*

RULES AND REGULATIONS. Boards of directors and their agents, the teachers, may establish reasonable rules for the government of their schools.

RULES AND REGULATIONS. The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school.

RULES AND REGULATIONS. The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher.

RULES AND REGULATIONS. Open violation of the rules cannot be shielded from investigation under the plea that it invades the rights of conscience.

BOARD OF DIRECTORS. The board shall be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

This case involves the right of a teacher to require a pupil to answer questions concerning his conduct in school, or to testify against himself.

Burritt Harwood, a member of the high school department, having broken certain rules of the school, was suspended by the superintendent for refusing to answer a question relating thereto. The pupil's father petitioned the board to restore the pupil. The board, having investigated the facts, adopted the following: "Resolved, That the school board sustain Prof. Shepard in his suspension of Burritt Harwood, provided Burritt Harwood be reinstated if he answer the question, for the refusal to answer which he was suspended, subject to such further action as may be taken by the principal or school board for making and circulating the caricature." The president and four other members voted for, and one against the resolution. From this action of the board, S. Harwood appealed to the county superintendent, who reversed its action. The board appeals.

The power of the parent to restrain and coerce obedience in children cannot be doubted, and it has seldom or never been denied. This principle applies equally to the teacher or to any one who acts in *loco parentis.* Boards of directors and their agents, the teachers, may establish all reasonable and proper rules for the government of schools, and to control the conduct of pupils attending the same. "Any rule of the school not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper." *Burdick v. Babcock*, 31 Iowa, 562.

The superintendent had occasion to leave the high school in charge of his assistant while he should attend to official duties elsewhere. On his return, about 4 P. M., the assistant reported that there had been much disorder on the part of some of the pupils, and that she had required several of the pupils to remain and report their misdemeanors to the superintendent. Burritt Harwood being called upon, said in substance: "I have two misdemeanors to report; I threw snow into the lower hall during recess, and I passed a piece of paper across the aisle to my brother's desk." Both are recognized as violations of the rules of the school. The nature and magnitude of the first are readily discernible, and need no further investigation; not so of the second; much depends upon the character of the "piece of paper," whether simply blank paper or containing writing or other marks. Being asked to state the nature of the paper, he at first answered

evasively. Being further questioned, he replied that it was "pictorial," that it was a "burlesque or caricature," that "it represented the schoolhouse and some person or persons," that "the person or persons represented were connected with the school." The question, "whom he had intended to burlesque," after some hesitation, he declined to answer. For this act of disobedience he was suspended.

The question which he refused to answer appears to differ in no essential feature from those previously answered. By it the teacher simply sought to discover an additional fact in connection with the case. If he had a right to ask the former he had the latter. If there is any reason why the pupil had the right or should claim the privilege of declining to answer the last, he should have stated it. Certainly no good reason appears from the nature of the offense, and the degree of punishment which it merited depended upon the information which the teacher sought to obtain by this and the previous question. If the paper contained simply the solution of a problem or something connected with his lesson, it merited one degree of punishment; if its purpose was to create merriment among the pupils, thus diverting their attention from their studies, it required another degree; if by it the pupil sought to bring ridicule upon a teacher, to the prejudice of the good order and government of the school, still another; each would be a violation of the rules, but not each equally punishable. The claim of appellee that it was an attempt to pry into the secrets of the heart, and was a violation of the right of conscience, is scarcely sustained by the facts. The question "whom did you intend to represent," is essentially equivalent to "whom did you represent." Its purpose evidently was not to find out the thought or intent, but the act of the pupil. The question was simply what was the character of the picture drawn and circulated to the disturbance of the school. It does not appear how the rights of conscience would be violated in answering the question. It may be true that the picture itself, if produced, would furnish the best evidence, but the teacher clearly had the right, in its absence, and knowing nothing of its nature beyond what the pupil had already revealed, to seek this information directly and immediately by proper questions. Nor can the pupil shield himself under the provision of the law that a prisoner at the bar cannot be compelled to answer questions which will tend to render him criminally liable or expose him to public ignominy. He is, in no proper sense, accused of crime before a court of law, authorized to sit in judgment under a criminal code.

The picture, which was afterward produced, reveals anything but a right spirit in the pupil. Probably no one who has seen it doubts that it is a coarse caricature of the superintendent and his assistant. His refusal to answer was evidently not that he could not conscientiously do so, nor that it would tend to criminate himself, but was a deliberate act of insubordination. All the attendant circumstances, the evasive and studied replies to the superintendent's questions, the caricature itself, and its circulation through the school during the absence of the superintendent, together with a previous malicious caricature of the same nature, all reveal a disregard for the regulations of the school, the respectful conduct due from a pupil, and an animus toward the teacher anything but proper.

In our opinion unnecessary stress was laid, in the trial before the superintendent, upon the technical ground of suspension by the superintendent. The board having had the whole subject under investigation, including statements of the offenses from both the superintendent and the pupil, sustained the superintendent, or in other words, suspended the pupil conditionally from the school, as it probably had a right to do for any one of the offenses named. This being a discretionary act, due weight must be given to such action by an appellate tribunal, especially should the board be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher and to prevent or suppress insubordination in the school. REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

June 8, 1874.

J. W. HUBBARD v. DISTRICT TOWNSHIP OF LIME CREEK.

Appeal from Cerro Gordo County.

APPEAL. The execution by the board of the vote of the electors upon matters within their control, is mandatory, from such action of the board no appeal can be taken. If such action is tainted with fraud, an application to a court of law is the proper remedy.

BOARD OF DIRECTORS. The board, though not bound by a vote of the electors directing the precise location of a schoolhouse site, is required to so locate it as to accommodate the people for whom it is designed.

BOARD OF DIRECTORS. If in the selection of a site the board violates law or abuses its discretionary power, its action may be reversed on appeal.

CERTIORARI. A fraudulent or illegal action may be corrected by application to a court for a writ of certiorari.

The electors of the district township voted a tax to build a schoolhouse on what is known as the Simons road, near where it crosses the Central railroad. On a separate motion, the board was instructed to sell the schoolhouse known as number three. In accordance with the first mentioned action, the board located a schoolhouse site on said road, fifty feet from said crossing. From this action appeal was taken, the appellant claiming it to be a relocation of the site known as number three, and that such action was with the express intention of selling the schoolhouse and abandoning the site thereof. The county superintendent reversed the action of the board and the district township appeals.

The district township coincides with a congressional township in boundaries and extent, and is comprised in one subdistrict. It is claimed that the action of the district township meeting did not represent the wishes of the people; that there are ninety-five voters in the district, and but twenty-seven were present at such meeting; also that in the location of the site the board did not consult the convenience of the people.

Section 1717 provides that the electors, when legally assembled at the district township meeting, shall have power "to direct the sale or other disposition to be made of any schoolhouse, or site thereof, and of such other property, personal and real, as may belong to the district." Section 1723 provides that the board "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district." Section 1724 provides that the board "shall fix the site for each schoolhouse, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict."

The execution of the vote of the electors by the board is mandatory, from its action in so doing no appeal can be taken. In case such action is in any manner tainted with fraud, an application to a court of law is the proper remedy.

The power to locate schoolhouse sites is vested originally in the board. Although the board has authority to locate schoolhouse sites, yet money legally voted by the electors for a specific purpose, must be expended in accordance with such vote; if voted to erect a schoolhouse in a certain subdistrict, it cannot legally be used to build a schoolhouse in another. While any directions of the voters attempting to locate precisely a schoolhouse site, are void, yet the board is bound so to locate it as to accommodate the people for whom designed, in the absence of such instructions the board may exercise more widely its discretion in fixing schoolhouse sites. If in the performance of this duty it violates law, acts with manifest injustice, or in any manner shows an abuse of discretionary power, its action may properly be reversed by the county superintendent. In this case we do not discover that the board has in any manner failed in the proper performance of its duty. REVERSED.

ALONZO ABERNETHY,

July 7, 1875. *Superintendent of Public Instruction.*

B. D. BACON *et al.* v. DISTRICT TOWNSHIP OF LIBERTY.

Appeal from Woodbury County.

BOARD OF DIRECTORS. The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure to make defense.

BOARD OF DIRECTORS. The acts of the board are presumed to be regular, legal, and just, and should be affirmed unless proof is brought to show the contrary.

TESTIMONY. The superintendent should afford full opportunity for the introduction of testimony, and the examination of witnesses should be so conducted as to disclose all material facts. What is shown by the plat need not also be presented orally.

The county superintendent sustained the board in locating the site for a new schoolhouse where the old one now stands. B. D. Bacon *et al.* appeal.

The peculiarity of this case is that at the trial before the county superintendent no oral testimony was introduced by the appellant.

It is the duty of the county superintendent to afford full opportunity to the appellant to present evidence, and it is desirable that the examination of witnesses should be so conducted that every material fact connected with the case shall be disclosed. But the action of the board cannot be reversed upon the allegations of the appellant without proof, or by reason of failure of the board to be present and make defense. The acts of the board are presumed to be regular, legal, and just, and should be affirmed by the county superintendent upon appeal, unless proof is brought to show the contrary.

The plats furnished with the transcript in this case are unusually minute, and it is possible that they were regarded as showing the material facts relating to the case. What is shown by the plat, need not be also presented orally, but any additional facts may properly be so shown. From the plat and affidavits, it appears that the appellants desire the schoolhouse site to be located about one-half mile south of the site on which the board resolved to erect a new house. The location of roads and dwellings in the subdistrict would seem to indicate that the point selected by the board will quite as well subserve the convenience of the inhabitants as that desired by the appellants. Under these circumstances the discretionary power of the board cannot properly be interfered with. AFFIRMED.

ALONZO ABERNETHY,

August 30, 1875. *Superintendent of Public Instruction.*

E. GOSTING v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Plymouth County.

SCHOOLHOUSE SITE. The action of a committee appointed by the board to locate a site is of no force until officially adopted by the board while in session.

SCHOOLHOUSE SITE. Subdistrict boundaries cannot be changed in an appeal relating solely to locating a site, nor can a site be located with the expectation that boundaries will be changed, unless such intention of the board is shown.

JURISDICTION. The county superintendent has jurisdiction only of the matter to which the appeal relates.

APPEAL. The right of appeal is confined to persons injuriously affected by the decision or order complained of. Ordinarily a person living in one subdistrict cannot appeal from an action of the board locating a site in another.

A committee appointed to locate a schoolhouse site for the accommodation of the residents of subdistricts number seven and nine, reported that it had selected the northwest corner of section ten, and afterward that it had chosen instead, a site about eighty rods east of the northwest corner of section eleven. There is no record showing that any action was taken in relation to these reports.

Subdistrict number nine consists of the east one-half of congressional township number 90, range 45. The appellant resides in subdistrict number seven, which comprises the west one-half of the same congressional township. The decision of

the county superintendent is as follows: "After considering the evidence and the plat introduced, I sustain the committee in its first location at the northwest corner of section ten of said township." D. M. Relyea appeals.

The power to locate schoolhouse sites is vested in the board of directors. The action of a committee appointed by the board to locate a schoolhouse site is of no force until its report is officially adopted by the board while in session.

Section 1725 provides that the board "shall determine where pupils may attend school; and for this purpose may divide their district into such subdistricts as may by them be deemed necessary." The object of dividing a district township into subdistricts is to determine where pupils shall attend school. While it is frequently the case that pupils may more conveniently attend school in an adjoining subdistrict, it would obviously be improper to locate a schoolhouse site expressly for the accommodation of such pupils, unless with the intention of subsequently making a redivision of the district township. The county superintendent has jurisdiction only of the matter to which the appeal relates. He cannot properly upon an appeal relating to the location of a schoolhouse site change subdistrict boundaries, nor can he locate a schoolhouse site with the expectation that such boundaries will ultimately be changed, unless such is shown to be the intention of the board.

The right to appeal from actions of the board is confined to persons injuriously affected by the decision or order of which complaint is made. Ordinarily, a person living in one subdistrict cannot properly appeal from an action of the board locating a schoolhouse site in another

The decision of the county superintendent is set aside, and the location of the schoolhouse site is left to the discretion of the board. REVERSED.

ALONZO ABERNETHY,

September 7, 1875. *Superintendent of Public Instruction.*

J. E. BROWN v. DISTRICT TOWNSHIP OF VAN METER.

Appeal from Dallas County.

APPEAL. The adoption of the committee's report in favor of retaining the old schoolhouse site, is an action from which appeal may be taken.

BOARD OF DIRECTORS. The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure to make defense.

BOARD OF DIRECTORS. The acts of the board are presumed to be regular, legal and just, and should be affirmed unless proof is brought to show the contrary.

SUBDISTRICT BOUNDARIES. The acts of a board changing subdistrict boundaries and locating schoolhouses are so far discretionary that they should be affirmed on appeal, unless it is shown beyond a doubt that there has been an abuse of discretion.

COUNTY SUPERINTENDENT. The weight that properly attaches to the discretionary actions of a tribunal vested with original jurisdiction, does not apply to the decisions of an inferior appellate tribunal.

The county superintendent reversed the action of the board in selecting the old site in subdistrict number two, upon which to erect a schoolhouse, and located the site about eighty rods westward of the old one. From this decision the district township appeals, claiming in substance that the county superintendent erred as follows: That there was no action of the board relative to the selection of a schoolhouse site in subdistrict number two from which an appeal would lie; that the board failed, by reason of a misunderstanding, to appear and defend, and that it was unjustly refused a rehearing; that the old site was suitable, convenient and at the center of population, both present and prospective, and that the reversal of the action of the board was without sufficient cause, there being no evidence that it abused its discretionary power or acted with injustice.

From the transcript it appears that a committee was appointed to select a site for the erection of a schoolhouse in subdistrict number two; that it reported in

favor of the old site, and that its report was adopted by the board. The law provides that an appeal may be taken by any party aggrieved, from any order or decision of the board.

That there was an action of the board, and that the subject-matter to which such action relates is the location of a schoolhouse site in subdistrict number two, there can be no reasonable doubt, hence the action of the board was subject to appeal, and such appeal gave to the county superintendent jurisdiction in the matter of location of said schoolhouse site.

It is the duty of the county superintendent to give due notice to all parties directly interested in an appeal from the board, and to afford full opportunity for the presentation of evidence, but the action of the board cannot properly be reversed upon the allegations of the appellant without proof, or by reason of the failure of the board to be present and make defense. The acts of the board are presumed to be regular, legal and just, and should be affirmed by the county superintendent, unless proof is brought to show the contrary. In this case, however, the board appears to have had due notice and ample opportunity to defend the case. It is not claimed that any additional evidence could be produced that would materially affect the issue; but that the board, understanding through popular report that the case was withdrawn, failed to be present at the trial, and upon this ground asks for a rehearing, which was very properly refused.

The site selected by the county superintendent is nearly central, being eighty rods west of that chosen by the board. Both appear to be suitable. The eastern part of the subdistrict is mostly prairie land, while the western portion is, to a considerable extent, timber land

The evidence as to which site will better serve the interests and convenience of the residents of the subdistrict is conflicting The board is entitled to the benefit of any doubt upon this point. Unless it is clearly proven that it has violated law, abused its discretionary power, or has acted with manifest injustice, its action should be affirmed.

It is urged by the appellee that the same weight attaches to actions of an inferior appellate tribunal, upon appeal, that is given to tribunals having original jurisdiction. It is held that the action of the board in matters of which it has original jurisdiction, is alone entitled to this consideration by any superior tribunal upon appeal. REVERSED.

ALONZO ABERNETHY,

September 17, 1875. *Superintendent of Public Instruction.*

MARY M. THOMPSON v. DISTRICT TOWNSHIP OF JASPER.

Appeal from Adams County.

TEACHER. When a teacher is dismissed in violation of his contract, an action in the courts of law will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal.

TEACHER. The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school.

The board discharged the teacher in one of the public schools of the district for dereliction of duty. She appealed to the county superintendent, who reversed its decision; from this action, the board, through its president, appeals.

At the hearing before the county superintendent the board filed a motion to dismiss the case for want of jurisdiction, insisting that the teacher having been dismissed in accordance with the provisions of section 1734, her proper remedy was an action at law for damages.

When a teacher is dismissed in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy·

when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal to the county superintendent, who is the proper officer to review questions of this character, and to determine whether the board has in the exercise of its authority violated the law or abused its discretionary power. Questions concerning the validity of contracts, the right to recover for services performed, and the interpretation of law, belong especially to judicial tribunals. Questions concerning the character and qualifications of the teacher, and his management of the school, are, by appeal, within the jurisdiction of the county superintendent. The motion to dismiss was properly overruled.

The charges of dereliction were want of promptness in commencing school in the morning, and an occasional refusal to hear the recitation of one or more of her pupils. For this dereliction there appears to have been some extenuating circumstances. Under the contract it was the subdirector's duty to have fires built. The boy employed to do this work often failed to have the schoolhouse in comfortable condition at nine o'clock. The teacher usually made up lost time by teaching after four o'clock, and there is no evidence that the subdirector or board ever advised her with regard to the performance of her duties. The board convened at the schoolhouse without previous notice to the teacher, and after taking the testimony of pupils, unanimously voted to discharge her. AFFIRMED.

ALONZO ABERNETHY,

May 8, 1876. *Superintendent of Public Instruction.*

S. W. WOODS *et al.* v. DISTRICT TOWNSHIP OF BRIGHTON.

Appeal from Cass County.

BOARD OF DIRECTORS The acts of the board must be presumed to be regular, and should be affirmed unless positive proof is brought to show the contrary.

SCHOOLHOUSE SITE. The prospective wants of a subdistrict may properly have weight in determining the selection of a site, when such selection becomes necessary, but not in securing the removal of a schoolhouse now conveniently located.

SCHOOLHOUSE SITE. To make a distinction between the children of freeholders and those of tenants in determining the proper location for a schoolhouse, is contrary to the spirit and intent of our laws.

The board by a vote of five to two rejected a petition asking the removal of the schoolhouse in subdistrict number eight. On appeal the county superintendent reversed the action of the board, and ordered the removal of the schoolhouse to the place named in the petition. Wm. F. Altig appeals.

Subdistrict number eight contains sections 27, 28, 33, 34, and sixty acres lying in section 32, and has a good commodious schoolhouse, erected three years ago, one-half mile west of the center, on a public road passing east and west through the center of the subdistrict. There are about thirty children of school age in the subdistrict, twenty-two of whom reside in the western half, and nineteen west of the present site. All those residing east of the present site, except one child, are within one and a half miles of the schoolhouse, while by the proposed removal, a large number would be at a greater distance.

The action of the board in refusing to remove a schoolhouse should not be interfered with on appeal, except upon evidence of violation of law, or abuse of discretionary power. In this case there is no evidence of such abuse. The prospective wants of a subdistrict may properly have weight in determining the selection of a site upon which to build a schoolhouse, when such a selection becomes necessary, but not in determining the removal of a house, located conveniently for the present wants of the subdistrict.

It appears that a considerable portion of the school population consists of the children of tenants, and much stress is laid upon the assumed distinction that should be made between the children of tenants and those of freeholders, in

determining the proper location of the schoolhouse. Distinctions based upon the ownership of property or permanence of residence are not made in the law, would not well comport with the fundamental principles upon which our public school system is based, and should not have weight in determining the location of schoolhouse sites. It is the duty of the board to provide equal school facilities for the youth of the district as far as practicable, regardless of considerations relating to permanence of residence. The schoolhouse may properly be removed whenever the conditions of the subdistrict require it, but unnecessary expense should not be incurred in such removal in anticipation of possible, or even probable, changes of this character.

REVERSED.

ALONZO ABERNETHY,

July 31, 1876. *Superintendent of Public Instruction.*

J. N. ARTHUR *et al.* v. INDEPENDENT DISTRICT OF FAIRWAY

Appeal from Adams County.

SCHOOLHOUSE SITES. The necessities of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future.

TESTIMONY. New testimony can be introduced only when the facts materially affecting the case could not have been known before the trial.

REMANDING OF CASES. When the evidence discloses that the action of the board was unwarranted, and the facts are not sufficiently shown to determine what should be done, the case should be remanded to the board.

In this case the board made an order relocating the schoolhouse site, from this order J. N. Arthur and others, residents of the district, appealed to the county superintendent, and upon his affirming the action of the board, to the superintendent of public instruction.

The district consists of sections one, two, eleven, twelve, thirteen and fourteen, and the old schoolhouse stands near the southwest corner of the southeast quarter of section one. The proposed new site is in the northwest corner of the southwest quarter of the northwest quarter of section twelve, on a public highway, and one-quarter of a mile north of the geographical center of said district.

The grounds of objection by the appellants to the removal are substantially, that the new site is on low bottom lands and subject to overflow, not accessible at all times of the year, and that it is not as near the center of the school population as the old site. They also suggest that a location at the cross roads one-half mile east of the new site is better ground and more convenient to the people. In fixing the schoolhouse site, the geographical position and the convenience of the people of each portion of the district should be considered.

From the large amount of testimony it is evident that the new site chosen is in a low place, and an affidavit sent to this office, and signed by a number of residents, proves beyond question that the site has been overflowed for several days of the last month. By a close comparison it is found that the number of residents who will have their distance to school increased by choosing the new site, is greater than of those who will have their distance diminished. By locating the schoolhouse at the cross roads, one-half mile east of the proposed new site, which location is claimed to be higher, and therefore less liable to overflow, three-fourths of the residents will have their distance diminished by forty to one hundred and sixty rods.

Although it may be true, as is affirmed in the testimony, that the western part of the district is as capable of settlement as the eastern part, the necessities of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future. While it is the rule of this department to sustain discretionary acts of the board, it seems that in this case the true interest of all concerned, and justice to a large portion of the people, demands that the schoolhouse should not be moved to the new site chosen.

To what extent the high waters of last month did affect the other locations under consideration, is not known to this department; it is therefore best to let the matter come up anew before the county superintendent for a rehearing. The decision of the county superintendent is therefore reversed, and the case remanded for a rehearing, with the direction from this department that the proposed new site is an unsuitable one for school purposes. REVERSED.

C. W. VON COELLN,
Superintendent of Public Instruction.

October 31, 1876.

IN BUZZARD V. INDEPENDENT DISTRICT OF LIBERTY.

Appeal from Monroe County.

QUO WARRANTO. The only proper means of affirming the right to exercise the privileges of an office, or to contest the illegal exercise of the same, is set forth in sections 3345–3352.

This is an action brought to compel the board to recognize a member elect. The evidence in the case seems to show that the appellant was duly elected and qualified, and that on presenting himself at the meeting of the board, he was, by vote of the board, debarred from acting, and another person admitted as a member. From this order of the board he appealed to the county superintendent, who dismissed the case for want of jurisdiction, and Mr. Buzzard again appeals.

It has been the uniform decision of this department that the right or title to office cannot be determined by any authority other than a court of law. We are compelled to agree with former opinions, by supreme court decisions, 16 Iowa, 371, 17 Iowa, 368, 22 Iowa, 75, in which the fact that an information *quo warranto* is the only proper means, legally, to affirm the right to exercise the privileges of an office or to contest the illegal exercise of the same, is clearly set forth.

In all cases over which we have jurisdiction, our decision is final; hence, if for no other reason, we cannot assume jurisdiction in this matter, as both parties have access to the courts, as provided by sections 3345–3352 of the Code. The county superintendent, therefore, very properly decided to dismiss the appeal, and his order is hereby AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

July 2, 1877.

J. J. WILSON *et al.* V. DISTRICT TOWNSHIP OF MONROE.

Appeal from Mahaska County.

COUNTY SUPERINTENDENT. The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which it had determined.

SCHOOLHOUSE SITE. The location of a schoolhouse can be dependent upon a change of boundaries only when it is shown in evidence that it is the definite and positive intention to make such a change.

HIGHWAY. If possible, every schoolhouse site should be upon a public highway.

COUNTY SUPERINTENDENT. May make a conditional ruling, by which his own decision will be governed.

On the 14th day of April, 1877, the board located the site for a schoolhouse. From its action, J. J. Wilson and others appealed to the county superintendent, alleging that the board had erred in making the location, in that, by reason of distance owing to the location of the roads, the location as made effectually deprived many of the subdistrict of the privilege of attendance at school. On trial, the county superintendent reversed the action of the board, and located a new site. From his decision the board appeals, claiming that the county superintendent erred in selecting a site entirely different from those with reference to which testimony was taken; that it is on the extreme east line of said subdistrict,

and hence cannot be called at all central; that the board took into account in making the location, the possibility of a change in the northern boundary of the subdistrict, which would make the situation chosen a suitable one for the remaining subdistrict; that a portion of his decision was conditional and void; and that the board did not abuse its discretion by making the location as it did.

The assumption that the county superintendent did not have the right to locate a schoolhouse site differing in location from the one made by the board, or the one petitioned for by the appellants, is a mistake. See *John Clark v. District Township of Wayne*, School Law Decisions of 1876, page 47; also the opinion of the attorney-general in *Iowa School Journal* for April, 1866, in which the following ruling was made: "The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which it had determined."

The nature of the subdistrict is peculiar. It is long and narrow, and its western boundary, the North Skunk river, which also makes nearly all its southern boundary, is a disturbing element when we attempt to locate the site of a schoolhouse to accommodate all the people. While under ordinary circumstances a site near the boundary of a subdistrict would be unadvisable, in this case it seems necessary, unless additional road facilities can be secured. The site selected by the county superintendent is clearly the one best calculated to accommodate the whole subdistrict as constituted at present.

The location of a schoolhouse site can be dependent upon a change of boundaries only when it is shown in evidence that it is the intention of the board, or boards, to make such change. In this case, it is not claimed that any change is actually intended or expected. The limit, as made provisionally by the county superintendent, of thirty days for such changes of roads as would make a more central location feasible and desirable, was too short a time, under the provisions of law, to effect the result. For that reason we shall extend the time for the establishment of a road to ninety days from the date of his decision, or to such time as the board of directors may show to be necessary to establish the road, provided that immediate steps shall be taken to bring about the result, if desired.

The discretion of the board was evidently abused in not providing equal school facilities for those living in the northern portion of the subdistrict, by the location of the schoolhouse site.

In case the road contemplated is secured, the board may locate the site thereon, as near the center of the subdistrict as good and suitable ground can be found. If no steps are taken to secure such a road, or in case the road cannot be procured, the location last chosen by the county superintendent is to be regarded as the site, and his decision is hereby AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

August 7, 1877.

WM. DONALD V. DISTRICT TOWNSHIP OF SOUTH FORK.

Appeal from Wayne County.

SALARY OF TEACHERS. The salary of teachers should be in proportion to their ability and responsibility, and not equal when these differ materially

SALARY OF TEACHERS. The control of salaries is wholly within the power of the board and cannot be determined by an appeal, because it is not within the jurisdiction of county or state superintendent to order the payment of money.

EXPLANATORY NOTES. Notes to the school law, while proper aids to school officers, have not the binding force of law, and a noncompliance with them is not necessarily a violation of law.

SCHOOLS. The wealthier portions of the community should aid their neighbors in sustaining good schools.

On the 18th day of March, 1878, the board made an order fixing the salaries of teachers for the summer schools at the uniform price of twenty dollars per month. From this action William Donald appealed to the county superintendent, who affirmed the action of the board. From his decision William Donald appeals.

It is alleged by the appellant that the county superintendent erred in deciding that the board did not violate law in voting that the same amount of salary should be paid to the teacher in each subdistrict. It is claimed that the board should have provided for a higher salary in some schools of the township.

The difficulty with appellant's counsel is that he believes the note to be a part of the law. My predecessor gave his own views of the employment of teachers and I most fully agree with him in his view. The law leaves the whole matter to the board and presumes that it will deal equitably. Unfortunately, selfishness is a nearly universal characteristic of human kind, and too often the majority, representing weak subdistricts, weak both in numbers and in property, demands an equal distribution of the money on hand for teachers' pay.

The law organizing the rural independent districts, passed in 1872, arose from the feeling that this selfishness was working injustice to little towns and wealthy and populous subdistricts. The creation of these independent districts works an injustice to the weaker districts, for it is proper and desirable that the wealthier districts should aid their weaker neighbors to sustain fair schools.

With regard to this case, we do not see wherein the board violated law. The idea of prejudice is slightly apparent from the testimony, but not sufficiently to reverse the action of the board. That equity has not been observed seems very evident, for it must be presumed that a larger school population requires a better teacher, and if a better and more experienced teacher is needed, a better salary ought to be paid. There are other considerations. Usually the expense of living is greater in the town than in the country. It is also the probability that a larger tax is paid by the town than by the country.

We are not able at this distance to determine whether twenty dollars is a sufficient compensation for the teacher of subdistrict number four of South Fork. But if twenty dollars is only sufficient compensation for the country subdistricts, it is our belief that a higher salary should be given the teacher in the town.

It is out of our jurisdiction to give advice to the board what to do in this case, after determining that we have no power to reverse its action, but we suggest that equity would be served if it should pay the five dollars per month assumed by Mr. Anderson. After giving our views thus in full, we must agree with the county superintendent, and his decision is therefore AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

June 29, 1878.

JAMES JACOBY *et al.* v. INDEPENDENT DISTRICT OF NODAWAY.

Appeal from Adams County.

SCHOOLHOUSE SITE. A schoolhouse site fixed by county or state superintendent affirming the discretionary act of the board, allows the board to exercise its discretion again, especially if material changes have occurred.

DISCRETIONARY ACTS. Suggestions from the electors upon matters entirely within the control of the board will in no manner prevent the fullest exercise of the discretion vested in the board by the law.

SCHOOLHOUSE SITE. The endeavor to show regard for the expressed wishes of the electors in the choice of a site will be an added reason in support of the action of the board.

In the summer of 1877, the board located a schoolhouse site, selecting one not desired by a large majority of the electors, as expressed at an informal meeting called by the board. An appeal was taken to the county superintendent, who reversed the action of the board, and in turn to the superintendent of public

instruction, who reversed the decision of the county superintendent, thereby sustaining the action of the board, on the ground that abuse of the discretion given by the law to the board, as charged, was not proved.

Since the decision above referred to was rendered, a dwelling has been erected within twenty rods of the site chosen. Also, a material addition has been made to the district on its east side of a strip of land three miles in length and one-half mile in width.

At a meeting of the board held April 22, 1878, it relocated the schoolhouse site, choosing the old site in place of the one selected by it last year. From its action James Jacoby and others appealed to the county superintendent, who affirmed the order of the board. D. Shipley and Ed. Kennedy appeal.

This case was before us last year and we affirmed the action of the board in selecting the new site, sustaining the discretionary act of the board. Hence, the principle that a site selected by the county or state superintendent cannot be changed unless there have been material changes in the district, does not apply. There have been changes by the addition of new territory and a dwelling being erected within less than forty rods of the proposed site. The choice of the old site is in conformity with the wish of a majority of the electors, and does not prove any abuse of discretion, much less a violation of law. The action of the board is sustained, and the decision of the superintendent AFFIRMED.

C. W VON COELLN,

August 26, 1878. *Superintendent of Public Instruction.*

L. E. CORMACK v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Adams County.

JURISDICTION. An appeal will not lie to enforce a contract.

JANITORIAL SERVICES. If a teacher serves as janitor in sweeping the room and building fires, he should be paid from the contingent fund for such services.

Mr. Vandyke, a subdirector, contracted with Mrs. L. E. Cormack as teacher for the winter term of school. The terms of the contract included that the teacher was to receive twenty-five dollars per month for teaching and one dollar and twenty-five cents a month for building the fires and sweeping the schoolhouse. The board refused to audit the full account, which would give the teacher pay for janitor's work, claiming that the said subdirector exceeded his authority in so contracting. Mrs. Cormack appealed to the county superintendent, who reversed the action of the board. W. C. Potter, president of the board, appeals.

This case has evidently for its object the securing of money on contract, and as section 1836 prevents county and state superintendents from rendering a judgment for money, it has been the common custom to refuse to entertain any appeal in which a contract is to be decided by such appeal; for this reason the county superintendent should have dismissed the case for want of jurisdiction.

It may not be out of place here to state that unless a contract with the teacher provides that building fires and sweeping the house is included, the board cannot require such service of the teacher. The payment for such services should come from the contingent fund and should be specifically mentioned. The teachers' fund is not to be used for paying for janitorial services.

Without deciding any question at issue, we are of the opinion that the subdirector did not exceed his authority given him by section 1753 when he agreed to pay a reasonable sum for janitorial services besides the twenty-five dollars paid under instruction from the board for teacher's services. But since we do not consider the case within our jurisdiction the decision of the county superintendent is reversed and the case DISMISSED.

C. W. VON COELLN,

March 1, 1879. *Superintendent of Public Instruction.*

NOTE—We have since learned that the teacher recovered in a suit in the courts at law.

W. F. RANKIN v. DISTRICT TOWNSHIP OF LODOMILLO.

Appeal from Clayton County

RECORDS The record of the secretary shall be considered as evidence, and cannot be invalidated by parol evidence unless there is proof of fraud or falsehood.

TERRITORY Where territory is to be transferred by concurrent action of two boards to the district to which it geographically belongs, a majority of the members elect is not necessary, as required for the change of subdistrict boundaries.

APPEAL. The action of two boards upon a subject over which they have divided control constitutes a concurrent action, and appeal may be taken only from the order of the board taking action last.

This appeal relates to the transfer of territory in the civil township of Cass, which has belonged to the district township of Lodomillo since 1856, to the township to which it geographically belongs

The board of the district township of Cass appointed a committee to meet a committee chosen by the Lodomillo board, to agree upon terms of transfer. The district township of Lodomillo also appointed a committee. The joint committee agreed upon a report, which the board of Cass adopted September 16, 1878. On the 12th day of October, 1878, the Lodomillo board, by a vote of four of the six members present of a board of ten, also adopted the report and accepted the proposition agreed to by the board of Cass.

From the action of the Lodomillo board W. F. Rankin appealed to the county superintendent, who dismissed the case for want of jurisdiction, and stated that the action of the board was plainly in violation of the law, since section 1738 requires a majority of the board to change the boundaries of subdistricts From this decision W. F. Rankin appeals.

The secretary's transcript of the transactions of the meeting of the board of Lodomillo, held October 12, 1878, does not show any irregularity in the transaction, does not show the number of members present, nor the number of votes cast by which the motion was carried.

According to a well established principle of law the records of any public or private corporation must be considered regular, and cannot be set aside by parol evidence, except under an allegation of fraud. Based upon the evidence of the transcript the whole transaction was carried on in conformity with law, and we can see no reason to interfere with the action of the board If we admitted the testimony of M. E. Axtel, showing that only six members of a board of ten were present, and that four of these six voted for the transfer, we would still hold that said transfer was legally made. The action of the board was not a change of boundaries of subdistricts, but a transfer under section 1798. The territory transferred, being part of districts organized before the law of 1858 took effect, could be transferred by concurrent action of the boards to the district to which it geographically belongs, and the limitation of section 1738, requiring a majority of the board to change subdistrict boundaries, is not applicable to this case.

The appeal is brought from the action of the board which concurred, and is therefore taken in a proper manner. For the reasons set forth the action of the board is sustained and the decision of the superintendent is REVERSED.

C. W. VON COELLN,

May 28, 1879. *Superintendent of Public Instruction.*

L. B. COLBURN *et al.* v. DISTRICT TOWNSHIP OF SILVER LAKE.

Appeal from Palo Alto County.

EVIDENCE. To establish malice or prejudice on the part of the board, positive testimony must be introduced, and the evidence must be conclusive.

COUNTY SUPERINTENDENT. A county superintendent should not ask the state superintendent to decide a case on appeal for him, but may ask for an interpretation of law, either by the state superintendent, or through him, by the attorney-general.

On the 25th day of August, 1879, the board fixed the location of a schoolhouse on the old site From this order L. B. Colburn and others appealed to the county superintendent, who affirmed the action of the board, and from this decision the same parties appeal.

Among the errors enumerated, the appellants urge that the county superintendent erred in holding that the board was not actuated by passion or prejudice. We fail to find any evidence establishing the existence of such malice or prejudice on the part of the board. Appellants also claim that the county superintendent erred in basing his decision on the verbal opinion of the state superintendent, given prior to the hearing of the case.

This affords an opportunity of censuring a practice quite common among county superintendents to ask the superintendent of public instruction for his opinion in an appeal which is pending. We have made it a universal practice to refuse answers upon the questions involved in the particular case, and have given only general principles which should govern county superintendents in determining cases of appeal. These general principles are so well established that an intelligent county superintendent ought to be familiar with them.

We advised the county superintendent in this case not to measure the respective distances of the different locations from the geographical center, before the trial of the appeal.

It is proper for a county superintendent to ascertain the interpretation of points of law, by securing an opinion from this department, or from the attorney-general through this department.

Without fully determining the merits of the respective locations, we must hold that the board did not abuse its discretion sufficiently to warrant interference. The appellants failing to prove malice or prejudice on the part of the board, its order should stand, and the decision of the county superintendent affirming its action is AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

March 30, 1880.

WM. BARTLETT V. DISTRICT TOWNSHIP OF SPENCER.

Appeal from Clay County.

APPEAL. May be taken by any resident aggrieved by an action of the board.
BOUNDARIES. Must conform to congressional divisions of land.
SCHOOLHOUSE SITE. Proper location of, depends upon form of subdistrict.
TERRITORY. All territory must be included within some school district.

On the 22d day of October, 1881, the board adopted the report of a committee locating a site for a schoolhouse in subdistrict number nine on the southeast corner of the southeast quarter of section twenty-one. From its order, William Bartlett appealed to the county superintendent, who reversed the action of the board and located the site on the northwest corner of the northeast quarter of the southeast quarter of section twenty-one. C. F. Archer appeals.

The counsel for the appellants files a motion to dismiss the appeal on the ground that persons not parties to the hearing below are debarred from appealing to the superintendent of public instruction. It has been repeatedly held that any person aggrieved may prosecute an appeal from the decision of the county superintendent, unless the right of appeal has been waived by previous agreement.

The subdistrict in which the location was made was formed by action of the board at the regular meeting in last September. The boundaries fixed by the board at that time, as shown by the plats in evidence, are the Little Sioux river and Prairie creek on the north, east and south, and the half section line running north and south through sections eighteen, nineteen, thirty and thirty-one, as the western boundary.

It is shown by the plat that the half mile strip on the western side of the subdistrict is supposed not to belong to subdistrict number nine, and it is stated by the county superintendent that this territory is supposed to be temporarily attached to the adjoining township for school purposes. We are compelled to notice this irregularity of boundaries, since the proper location of any schoolhouse obviously depends largely upon the form and extent of the territory for which the house is designed. Section 1796, providing for the creation of subdistricts and for subsequent alterations in their boundaries, contains the following: "Provided that the boundaries of subdistricts shall conform to the lines of congressional divisions of land." When government lines follow large streams, or other bodies of water, a division is sometimes formed containing less than forty acres; but unless such exception applies, the smallest congressional division is the one-sixteenth of a section, or forty acres in a square form. In fixing the boundaries of subdistricts no smaller subdivision can be made, and a forty-acre tract must be included in the subdistrict, or excluded, as a whole.

The only provision of law by which the half mile strip could be attached to the adjoining district township, is found in section 1797. The transfer can be made only when natural obstacles intervene. It is apparent from the plats in evidence that no large unbridged stream, or any other natural obstacle, exists. Hence we must conclude that it is the duty of the board of directors of the district township of Spencer to provide that the strip in question shall be a part of some subdistrict. It seems probable that a portion of the territory referred to will naturally fall to subdistrict number nine. The county superintendent appears to have presumed that the subdistrict would ultimately include all the territory to the township line. That the territory does belong to the district township of Spencer, unless it has been attached to the adjoining township, in accordance with section 1797, there can be no question. Such being the facts in this case, and the evidence disclosing that the board did not exercise that care in selecting a site which is desirable when so many interests are involved, we are disposed to remand the case to the board, with the suggestion that it adjust the boundaries of the subdistrict, and determine upon some other site than the one chosen by it, with the intention to furnish the best accommodation to all parties.

REVERSED AND REMANDED.

J. W. AKERS,

February 15, 1882. *Superintendent of Public Instruction.*

J. D. HANDERSHELDT v. DISTRICT TOWNSHIP OF DES MOINES.

Appeal from Jefferson County.

DISCRETIONARY ACTS. Abuse of discretion is not established by testimony showing that a different action would have been preferred by the electors.

DISTRICT ORGANIZATION. The county superintendent has no jurisdiction to determine the validity of district organization.

TESTIMONY. To be legal must be given under oath.

BOUNDARIES. Of subdistricts, changed between September and March.

MAJORITY VOTE. Of whole board required to change subdistrict boundaries.

A petition was presented to the board asking that certain territory in Des Moines township be set aside to form, in connection with territory to be obtained from the independent district of Liberty number eight, a new subdistrict to be known as subdistrict number nine, Des Moines township. The board acted on this petition and made the following order: "In the matter of the petition of J. D. Handersheldt and Silas Pearson, asking for the formation of a new subdistrict to be known as number nine, in the district township of Des Moines. All the territory within the boundary lines therein described, is hereby granted, provided sufficient territory be granted by the independent school district of Liberty

number eight, to make a suitable and convenient subdistrict as to the amount of territory and the number of children of school age; and provided, that in case the territory is not granted by said independent district of Liberty number eight, then said territory hereby granted shall remain and be a part of subdistrict number five, of the district township of Des Moines."

On the 28th day of April, 1882, the board of the district township of Des Moines, at a special meeting, adopted the following resolution: "It is hereby ordered that all action heretofore taken by the board of the district township of Des Moines, in the formation and organization of subdistrict number nine, in the above named township, is hereby rescinded." From this action of the board, J. D. Handersheldt appealed to the county superintendent, who upon hearing the case on appeal rendered the following decision: "A resolution passed rescinding an action which has not as yet taken effect, is legal, but so far as it concerns formation and organization which is already completed, it is illegal." From this action or decision of the county superintendent, J. D. Handersheldt appeals.

It appears from the transcript of the county superintendent that the witnesses were not sworn A failure to take testimony under oath is fatal to the case, even though from its nature it came properly before the superintendent on appeal.

A brief examination will be sufficient, we think, to show that this action should have been dismissed by the county superintendent for want of jurisdiction, since no appeal will lie when the validity of district organization is involved.

This appeal was taken from the action of the board to the superintendent, for the purpose of determining whether or not the board erred in rescinding its former action creating subdistrict number nine. There was very little evidence bearing on this, the sole issue in the case. Witnesses simply stated that they were or were not in favor of subdistrict number nine.

Such testimony can have no bearing in an action to establish error on the part of the board. Appellants set forth in their affidavit that the county superintendent erred, in that he refused to admit testimony to show that there never had been any legal organization of subdistrict number nine. We think such evidence was properly excluded, and yet it is necessary, to enable any tribunal to arrive at a decision of the case; for if the district was organized according to law, then the board committed error in making an order which operated to discontinue it, and hence to change boundaries of subdistricts at a time of year in which, according to our holding, it cannot be done. Upon the presumption that the district was legally organized, it committed error by making a change of subdistrict boundaries without a majority of the whole board.

It must therefore be determined whether the conditions upon which the board of Des Moines township granted the territory, were fulfilled, or, in other words, it must be known whether or not the independent district number eight, of Liberty, concurred in the transfer of the territory. But neither the county superintendent nor this department is competent to determine the legality of a district organization, and it is therefore impossible for us to decide whether or not the board committed error.

The remedy is an application to a court of law for mandamus to compel the board to recognize the subdirector of subdistrict number nine, as a school officer and member of the board of the district township of Des Moines. Were the issues involved within our jurisdiction, we would not hesitate to consider them, but as no question of such a nature is connected with the case it is DISMISSED.

J. W. AKERS,

November 2, 1882. *Superintendent of Public Instruction.*

APPLETON PARK v. INDEPENDENT DISTRICT OF PLEASANT GROVE.

Appeal from Des Moines County.

RECORDS. The official record is its own best evidence. Testimony intended to contradict the record should not be admitted.

RECORDS. Records not made and certified to by the proper officers as required by law are defective and may be impeached by collateral evidence.

TEACHER. The law provides that a teacher shall have a fair and impartial trial, with sufficient notice to enable him to rebut the charges of his accusers.

CHARGES. Must be clearly sustained by the evidence.

Appleton Park was duly engaged and contracted with. He began teaching on the 4th day of September, 1882; after some ten or eleven days had expired, during which time he had taught the school, he was waited upon by the entire board, called to the door and informed that certain rumors were being circulated, to the effect that he had been guilty of using obscene and vulgar language in the presence of his pupils, and during regular school hours. The board called at the schoolhouse again about the hour for closing the school in the afternoon, and the school having been dismissed, it proceeded to examine three of the boys as to the truth of the charges above referred to. The result of this action was that the teacher left the school and the board employed another teacher. Mr. Park appealed to the county superintendent, who reversed the action of the board, whereupon D. L. Portlock, president of the board, appeals.

The principal difficulty presented in this case seems to be to determine just what that action or order of the board was from which the appeal was taken The transcript filed by the secretary of the board, is as follows: "Complaint being made by some of the scholars to the school board, in regard to the teacher, Appleton Park, using indecent, rough and insulting language during school time, the board met at the schoolhouse to make an investigation The board stated the above charges to the teacher, Appleton Park, who after reflecting upon the matter, proposed his resignation to the board. The board, after due consideration, accepted the same. The question being settled in the above way, and no other business before the board, the board then adjourned."

The parol evidence of Appleton Park was admitted to offset and impeach the record. This was clearly in violation of well established law, if the record was really what it purported to be, a true and authenticated copy of the proceedings of the meeting of the board referred to.

Starkie On Evidence, says: "Where written instruments are appointed, either by the immediate authority of law, or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy, to exclude any inferior evidence from being used, either as a substitute for such instruments, or to contradict or alter them; of principle, because such instruments are in their own nature and origin entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, p. 995, Vol III, 3d Amer. Ed.

The fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and in admitting parol evidence.

We come now to consider whether the trial before the board was such a proceeding as is required by section 1734. The board called in the morning and informed the teacher of the charges preferred against him, whereupon he offered to resign. It instructed him to proceed with his school and stated that it would return in the evening During the day the board worked up its case against the teacher, while he was so employed as to prevent him from giving thought or attention to the charges, or to the preparation of any adequate defense.

We must sustain the superintendent in finding that the trial and opportunity to defend was not what the law intends every teacher shall have. Every teacher

is entitled to the sympathy and support of the school board, and where there is any reasonable doubt as to the truth of stories circulated by school children, the teacher should have the benefit of such doubt. We believe that had the board been in sympathy with the teacher in this instance, it would have decided that the charges were not sustained by the evidence, at least by any evidence which appears of record. That the teacher offered to resign in the evening does not appear from the evidence offered in behalf of the board, while it does appear that at least one member of the board told him "he had better quit."

We are compelled to hold that the teacher was dismissed, and that in doing so for no sufficient reason the board erred, and the decision of the county superintendent is therefore AFFIRMED.

J. W. AKERS,

February 16, 1883. *Superintendent of Public Instruction.*

NOTE—Our supreme court rendered a decision regarding the measure of damages resulting from the wrongful discharge of this teacher. The opinion is found in 65 Iowa, 209.

J. L. MARSHALL *et al.* v. DISTRICT TOWNSHIP OF MARSHALL.

Appeal from Louisa County.

SUBDISTRICT. The board may not redistrict so as to abolish a subdistrict, with the manifest intent to prevent the building of a house provided for by the electors
SCHOOLHOUSE TAXES. Must be certified, collected, and expended, in accordance with the vote of the electors.

On the 22d day of February, 1886, the board abandoned subdistrict number four, and transferred its territory in parcels to adjoining subdistricts. J. L. Marshall *et al.* appealed to the county superintendent, who reversed the order of the board N W Mackay, president of the board, appeals.

It is unnecessary to consider the real merits of this case. The board must be reversed upon the ground that at the meeting of the electors of subdistrict number four, held in March, 1885, a tax of $300 was voted to build a schoolhouse in said subdistrict number four. It appears in evidence that this tax was voted, properly certified by the district board and levied by the board of supervisors, and that a portion, at least, has been collected. It is not competent for the board to defeat a vote of this kind by districting the subdistrict out of existence. The money must be expended in accordance with the vote, and the house must be built. Whether or not any of the tax has been collected is not material. It must be collected and expended by the board as directed by the people. The case of *Benjamin v. District Township of Malaka et al.*, 50 Iowa, 648, is applicable here. The only point of difference being that in the case cited the tax had been collected before action was had by the board

In this case a part only of the tax has been collected, but as stated, this is not material. The equities of this case may be with the board, but the action of the electors in voting to build a house in subdistrict number four, and in providing the means, will bar the board, and any act calculated to avoid its mandatory duty is a violation of the law AFFIRMED.

J. W. AKERS,

September 16, 1886. *Superintendent of Public Instruction.*

J. B. B. BAKER v. INDEPENDENT DISTRICT OF WAUKON.

Appeal from Allamakee County.

RULES AND REGULATIONS. In establishing and enforcing regulations for the government of scholars the board has a large discretion.

On the 7th day of June, 1886, Maud Baker was suspended for repeated violation of a rule of the board, known as rule five, which reads as follows: "Any

scholar who shall be absent five half-days in four consecutive weeks, without any excuse from parent or guardian satisfactory to the teacher that the absence was caused by said pupil's sickness, or by sickness in the family, or, in the primary grades, by severity of the weather, shall forthwith be suspended. No pupil so suspended shall be reinstated without a permit from the principal."

Rule twelve provides that the principal of the school may suspend pupils temporarily, and that he shall immediately notify the parent or guardian of a suspended child of such suspension, the notice to be in writing, and furthermore, that he shall immediately inform the board of his action.

Maud Baker was absent without excuse, and when called to account for her absence stated that she had gone on a fishing excursion, and expected to go the week following. Having failed to render a satisfactory excuse, she was suspended, as above stated. Notice in writing was sent to the parent, as required by rule five, and the board informed of the suspension. The board approved the action of the principal. J. B. B. Baker appealed to the county superintendent, who reversed the action of the board. D. W. Reed appeals.

The facts in this case are not controverted. It appears in evidence that the suspension of Maud Baker was reported to the board, and that a special meeting of the board was held for the consideration of the act of the principal. Maud Baker was present at this meeting of the board, and the president testifies that he read to her the rule under which she had been suspended, and asked her to give the board some promise of amendment in the future, as a condition of reinstatement, and she replied that she would not make any promise for the future, and expected to go fishing the following week.

The county superintendent finds that the suspension was made in compliance with the rules of the board for the government and regulation of the schools, and that the act of the principal in suspending, and of the board in approving his action, was without prejudice or malice. The board was reversed on the ground that the law does not confer upon the principal, or the board, power to suspend for the cause for which Maud Baker was suspended.

The case turns, therefore, upon the power of the board to establish and enforce a rule providing for the suspension of pupils, who are absent a given number of days, or half-days, without a satisfactory excuse. This point has been fully discussed and settled by our supreme court in the case of *Burdick v. Babcock*, 31 Iowa, 562, and need not be considered here. *Murphy v. Independent District of Marengo* has been cited, but does not apply, as in that case it is stated that the offense for which the pupil was dismissed was not in violation of any rule or regulation.

We are compelled to overrule the decision of the county superintendent, and to sustain the action of the board. REVERSED.

J. W. AKERS,

October 23, 1886. *Superintendent of Public Instruction.*

JAMES TOMPKINS v. INDEPENDENT DISTRICT OF KEYSTONE.

Appeal from Page County.

SCHOOLHOUSE SITE. It is manifestly unwise for the electors to express any preference for a site, by a vote. The remedy of any one aggrieved by the action of the board is appeal.

SCHOOLHOUSE SITE. The board is bound to take into account any special reasons existing which favor a particular location, and a vote of the electors to expend schoolhouse funds in a certain specified manner, may not be disregarded.

SCHOOLHOUSE SITE. A village in a subdistrict has special claims favoring the selection of a site within its limits. The element of distance to be traveled by some is largely overcome by the advantages of a location in the town.

SCHOOLHOUSE SITE. A suggestion from the electors should be given such weight as there is value in the reasons upon which the expressed wish of the electors is based.

On the 24th of May, 1886, the board located the new schoolhouse upon the site of the old house. At the meeting of the electors on the 12th of March, 1884, the sum of one thousand dollars was voted to build a schoolhouse in Page Center. The board regarded the designation of the site as advisory only, and located the house one-half mile from Page Center. James Tompkins appealed to the county superintendent who found that the board had violated law, and for this reason reversed its action. G. W. Stanage appeals.

Section 1724 confers upon boards the power to locate schoolhouse sites. If, however, the location of the schoolhouse is coupled with and designated in the vote to build, the house must be built in accordance with the vote. The transcript of the record filed by the secretary contains this statement: "Voted a tax of one thousand dollars for the purpose of building a schoolhouse in Page Center."

While any attempt on the part of the electors to designate the precise location of a schoolhouse site would be an unwarranted assumption of power, nevertheless a vote to build a house in a certain village or town plat, in connection with the vote to appropriate money for that purpose, we think so far concludes the board as to location as to require the selection of a site within such specified limits. Any other holding would open the way to fraud and deception. We are compelled to hold that the board should have selected a site in Page Center. The decision of the county superintendent is AFFIRMED.

J. W. AKERS,

November 1, 1886. *Superintendent of Public Instruction.*

A. J. HOSINGTON v. DISTRICT TOWNSHIP OF UNION.

Appeal from Madison County.

APPEAL. Failure to file the transcript within the time mentioned in the law will not invalidate the appeal.

MANDAMUS. Is the method of compelling the performance of an official duty mandatory in its character.

ADDITIONAL SCHOOL. It is the intention of section 1725 that an attendance of at least ten scholars may reasonably be expected.

It appears that at the regular meeting of the board held September 19, 1887, E. O. Storrs and others presented a petition for an extra school for their convenience. On motion said petition was taken up and granted. From this action A. J. Hosington appealed to the county superintendent, who heard the case in due form, reversing the action of the board. E. O. Storrs and others appeal.

Counsel for appellant urges as error that the district secretary failed to file his transcript of the record within the ten days required by section 1832. The appellants claimed that the county superintendent had, on this account, lost jurisdiction, and moved to dismiss the case. The county superintendent overruled the motion. Did he commit an error in so doing? We think not. It is true as alleged by appellants that after the expiration of the thirty days mentioned in sections 1830–1835, the county superintendent cannot entertain an appeal. The action referred to in these sections lies within the choice of the aggrieved party, the law grants him thirty days within which to make his election. The action referred to in section 1832 is mandatory upon the secretary, he has no choice, he cannot elect one of two courses of action. If he fails to do his duty within the prescribed time a writ of mandamus may compel him to act. But in no case does his failure to produce the transcript invalidate the appeal or lessen the duty of the county superintendent to proceed in the case.

Did the county superintendent err in taking into account the financial condition of the district township? We cannot admit that he did. While the want of funds will not excuse a board from maintaining schools, this department has held that the financial conditions should be considered in ordering an extra school. In this case the secretary testifies that the funds available will not more than meet the expenses of the seven schools now in session.

The original petition shows twelve pupils of school age for whose accommodation the school is desired. This department has held that the intention of the present section 1725 is that there must be a probable attendance of ten to warrant the board in establishing an extra school. What are the facts in this case as gathered from the evidence? One child included is two years old. In a family having five of school age but three are at home. One of the others is a graduate of the Winterset high school, and the other is an attendant at the same school. The probable attendance in the extra school would be only four or five.

Under all the circumstances we believe the board did not act with due discretion, and that the county superintendent was fully justified in reversing its action. The decision of the county superintendent is therefore AFFIRMED.

HENRY SABIN,

February 22, 1888. *Superintendent of Public Instruction.*

N. R. JOHNSTON v. DISTRICT TOWNSHIP OF UTICA.

Appeal from Chickasaw County.

MANDAMUS. To compel the performance of an official duty, appeal sometimes consumes valuable time. Mandamus is often a more speedy and better remedy. DISCRETIONARY ACTS. Action by the board unduly delaying the final consideration of an important matter, may be regarded as an evidence of prejudice.

The issues involved in this case were the formation of a new subdistrict to be known as number twelve, and the providing for a school during the winter of 1887–8, pending the election of subdirector for the new subdistrict. The case came in due order to the county superintendent on appeal, and from his decision the board appeals.

At its meeting on the 19th of September, 1887, the board had before it a petition signed by Caleb Boylan and others, to redistrict number two, and to form a new subdistrict. After various motions it was voted to adjourn to the second Saturday in February, 1888, to consider said petition. Appeal was taken to the county superintendent.

At the trial before that officer, October 27, 1887, and adjourned to October 31, a motion was made to dismiss the case, on the ground that the matter was still pending before the board, as no final action had been taken by that body. The motion to dismiss was overruled, and the county superintendent proceeded to hear the case. Did the county superintendent commit an error? We think not.

Without impugning in any way the motives of the board, its action in adjourning to a date as late as the second Saturday of February, was calculated to delay and defeat the prayer of petitioners. The aggrieved parties had an undoubted right to appeal, but we regret that they did not avail themselves of the more speedy remedy of resorting to the courts. A writ of mandamus would undoubtedly issue in such a case, compelling the board to perform its enjoined duty.

A motion to dismiss on the ground that there was no evidence to show that the board acted with passion, prejudice, or injustice, was also very properly overruled. The action of the board delaying the whole matter until the second Saturday of February, 1888, was in our opinion an act of manifest injustice, which the superintendent very properly took into account in making his decision.

The county superintendent reversed the action of the township board and ordered the new subdistrict, number twelve, to be formed, with an extra school for the winter of 1887–8, in accordance with the prayer of the petitioners. Ought his decision to be sustained?

A careful review of the evidence in the case, including the plat "exhibit A," shows that the township of Utica is divided into eleven subdistricts, some of them very large and irregular in shape. A better division than that proposed by the formation of the new subdistrict, number twelve, can possibly be made. The

county superintendent, however, provides for this, as his decision does not prevent any changing of the boundaries of subdistrict lines, if necessary to facilitate the school privileges of the township.

A new subdistrict is needed to furnish reasonable school facilities for the children in that neighborhood, and so far as ordering the new subdistrict, to be known as number twelve, is concerned, the decision of the county superintendent is

AFFIRMED.

HENRY SABIN,

March 15, 1888. *Superintendent of Public Instruction.*

N. R. JOHNSTON v. DISTRICT TOWNSHIP OF UTICA.

Appeal from Chickasaw County.

APPLICATION FOR A REHEARING.

REHEARING. To justify the granting of a new trial, a reasonable doubt must arise in the mind of the officer to whom application is made, as to the absolute correctness of his former conclusions.

Comes now the appellant, the district township of Utica, and asks for a rehearing of the above case.

The acts of a board are recognized as mandatory or discretionary. When they are mandatory, and the board acts in accordance with the law, the aggrieved party has no remedy whatever; when they are discretionary the aggrieved party has a remedy in an appeal, which may be taken eventually to the superintendent of public instruction, whose decision is final.

Now, to say that the discretionary acts of a board must be sustained because they are discretionary, destroys the right of appeal and takes away the last remedy of the aggrieved party. The action of the board should be sustained, unless it acts through passion, prejudice, or manifest injustice. Who is to decide whether its action is an abuse of discretionary power? Surely not the board, nor the aggrieved party.

The question is one upon which the county superintendent may be called to pass, and from his decision an appeal may be taken to the superintendent of public instruction. If the county superintendent in the discharge of his duty determines that the board has abused its discretionary powers, he has power to reverse its action, and this department should affirm his decision if his conclusions are found to be correct.

In the present case the board, at the meeting on the 19th of September, 1887, had before it a petition asking for the formation of a new subdistrict, and a school during the winter of 1887–8. It postponed the consideration of said petition until the second Saturday in February, 1888. The aggrieved parties had their choice between two remedies. They could apply for a writ commanding the board to act, or they could appeal to the county superintendent. They chose the latter; they could have chosen the former. See case of *Crookshank v. District Township of Maine*, School Law Decisions 1888, page 88. Also 35 Iowa, 445, and 71 Iowa, 632. It is not claimed that the writ could control the action of the board, but it could compel it to act in the premises. See *Hightower v. Overhouser et al.*, 65 Iowa, 350, *Albin et al., v. Board of Directors of West Branch*, 58 Iowa, 77, and *Case v. Blood et al.*, 71 Iowa, 632.

The attorneys for the board cite the case of *Marshall v. Sloan*, 35 Iowa, 445, in support of their position. In that case the board acted, it rejected the petition and its action was a matter of record. In the case under consideration the board postponed action in such a way as to delay and possibly defeat the purpose of the petitioners. In the present case the county superintendent reversed the action of the board, because of the injustice done to one party through the delay in its action, and also did only, on appeal, what the board had power to do.

Upon reviewing the case carefully the second time we find that the county superintendent reached a correct conclusion as to the action of the board, and nowhere exceeded his authority. The application for a rehearing is denied.

HENRY SABIN,

March 26, 1888. *Superintendent of Public Instruction.*

JACOB DECK *et al.* v. DISTRICT TOWNSHIP OF EDEN.

Appeal from Decatur County.

SUBDISTRICT BOUNDARIES. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

SUBDISTRICT BOUNDARIES. In changing subdistrict boundaries, both the present and the future welfare of the district township should be considered.

SUBDISTRICT BOUNDARIES. A subdistrict long established, embracing a territory having a sufficient number of scholars to maintain a good school, should not be abolished, unless the general school facilities of the township will be improved thereby.

On the 19th day of September, 1887, the board voted to abolish subdistrict number eight. Jacob Deck and others appealed to the county superintendent, who on the 5th day of December rendered a decision reversing the action of the township board, and the board appeals.

The counsel for the directors urged in their written argument that the county superintendent should be required to send up to this department all the testimony taken in the trial before her. It was certainly the duty of the county superintendent to send up all the testimony upon which she based her decision. In the absence of any proof to the contrary, the presumption is that the transcript furnished by her contains all the testimony on file in her office. There is no proof offered that she has not complied with the law in all respects.

On the 26th day of December, 1885, the county superintendent rendered a decision reversing the action of the board in abolishing subdistrict number eight. As no material changes have taken place since then, in the condition of the township, does that former decision act as a bar to any further proceedings in this case? We think not.

The principle enunciated here is undoubtedly correct. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision. In this case, however, the decision of the county superintendent cannot act as a bar to further proceedings, because the district board did not take an appeal. Such proceedings cannot be considered as final in such a sense until they have been affirmed by the superintendent of public instruction.

It is urged that the county superintendent erred in taking into consideration the distance which many of the pupils must travel in order to reach their school, if the action of the township board abolishing subdistrict number eight, is affirmed. The law does not contemplate that one and one-half miles is in all cases an unreasonable distance. It depends largely upon the age of the pupil and upon the condition of the roads In the case before us a natural obstacle, the Little Turkey river, must be taken into consideration. The opening of additional roads and the construction of a bridge would simplify matters somewhat, but no steps have been taken to accomplish this. Until this is done, to abolish the school in number eight would impose an undue hardship upon a large number of pupils.

What are the conditions of the school as at present constituted? The report of the secretary put in evidence, shows that the school in number eight will average with other subdistricts in the number of pupils enrolled; it is above the average in daily attendance, and below the average in cost of tuition. The board fails to show that reduced numbers render it expedient to abolish this subdistrict, nor does it show that the township is excessively taxed to support its schools.

This department has already ruled that subdistrict lines, which have been long established, embracing a territory having a sufficient number of pupils to maintain a good school, should not be disturbed, unless it can be proved that the general school facilities of the township will be improved by the change.

The board does not show that there is any general benefit to be expected from the proposed change of boundaries, nor does it prove that any existing necessity makes it desirable. The board undoubtedly intended to act fairly toward all, but we think it failed to properly consider all the circumstances involved in its action. The decision of the county superintendent is therefore AFFIRMED.

HENRY SABIN,

March 16, 1888. *Superintendent of Public Instruction.*

J. S. FOLSOM *et al.* v. DISTRICT TOWNSHIP OF CENTER.

Appeal from Cedar County.

REHEARING. To warrant a rehearing, some valid reason must be urged.

TESTIMONY. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

SCHOOLHOUSE SITE. Every dwelling-house must be taken into account, as some one entitled to school advantages may hereafter reside there.

SCHOOLHOUSE SITE. When it is the evident intention of the board to relocate the site as near as possible in the center of the subdistrict, in order to furnish equal school facilities to all the residents, its action should not be materially interfered with.

The transcript in this case shows that on the 21st day of March, 1887, at a meeting of the board, a committee was appointed to investigate the needs of subdistrict number two and report at the meeting in September. It further shows that on the 19th day of September, 1887, such committee reported, recommending that the new house be built for said subdistrict, to be located in the center of the district. The report was received and the committee discharged. The report was also upon motion, laid upon the table.

On the 19th day of March, 1888, at a meeting of the directors, the above report was finally adopted and a building committee was appointed to confer with the county superintendent in regard to plans and specifications. From this decision of the board Folsom *et al.* appealed to the county superintendent, and the case was heard at Tipton on the 9th day of April, 1888. The records in the county superintendent's office show that the appellee consented to the filing of an amendment to the affidavit by appellant, and that the appellee filed a motion to modify the decision of the board, and the trial then proceeded. On the 11th day of April the county superintendent filed a decision reversing the action of the board. On the 17th day of April, 1888, a motion was filed for a rehearing, within the time given by the county superintendent. On the 19th day of April, 1888, the motion for a rehearing was argued before the county superintendent and overruled. From the decision of the county superintendent the board appealed to the superintendent of public instruction, and the whole case came up on a hearing before him on the 5th day of June, 1888.

The first question to be decided is: Did the county superintendent err in overruling the motion for a rehearing? A rehearing of such a case can be granted only when it can be shown that some injustice has been done, or some mistake has been made which can be corrected by a new trial; or when some additional

evidence has been discovered which is in favor of the party applying, but which could not have been presented before by reasonable diligence. The affidavit upon which the motion for a rehearing was based failed to show any such reasons. All the main points alleged therein had already been ruled upon by the county superintendent, and we think she did not commit any error in overruling the motion. This also disposes of all the testimony sent up in support of the motion for a rehearing, these affidavits will not be taken into account in the final decision.

It is not necessary here to determine the legal residence of William Busier. His own testimony is that the distance from his residence to the site selected by the board is one and one-fourth miles The fact that Mrs. Morgan does not desire to send to school is not material. It is not the individual but the residence that is to be considered. Some other person living at the same place may hereafter desire school privileges.

We are now free to approach the main question upon which issue is joined. The testimony shows that the directors desired to relocate the schoolhouse in subdistrict number two in a more central location, no other reason is assigned for the contemplated removal. There is nothing to show that the present site is unsuitable, except that it does not well accommodate the pupils from the northern part of the district. In this determination to relocate the site near the center, there is no evidence of any abuse of discretion on the part of the board and we think its action should not be interfered with.

There is, however, evidence which shows that the exact acre which the committee staked out is not a desirable site for a building. The board itself acknowledges this in its amended order by which the site is removed ten rods north.

The county superintendent, in her decision, locates the site upon a piece of ground known as the "grave-yard site." It is urged that the county superintendent has only appellate jurisdiction, and must therefore confine her decision to the two sites upon which the parties joined issue. She seems to have entertained some such idea, as she sustained a motion to rule out all testimony in regard to the unsuitableness of the grave-yard site when such evidence was offered in the original trial. We think that such evidence should have been admitted.

In April, 1866, the Hon. O. Faville, then superintendent of public instruction, obtained this opinion from Hon. F. E Bissell, then attorney-general: "The case does not come before him (the county superintendent) merely to correct an error of the board of directors, but to hear and decide the same matter that the board had decided. The county superintendent is not limited to an affirmance or reversal of the action of the board, but he determines the same question that the board determined." See also *John Clark v. District Township of Wayne*, page 47, School Law Decisions of 1876.

To this opinion the decisions of this department have always conformed. The county superintendent therefore did not go beyond her jurisdiction in selecting a site different from any which had been considered by the board.

We cannot see, however, that the grave-yard site has any advantage over the old site. It is irregular in shape, and is about as far north of the center of the subdistrict as the present site is south. In fact, its selection as a site for the new building defeats the very end which the board had in view in its action locating the site in the center of the subdistrict.

The case is remanded to the board, with instructions not to build upon the site selected by the committee, but to select the best site possible within a distance not more than forty rods from the center of the site staked out by the committee; the south corner of said site, however, to be at least fifteen rods north of the south corner of the committee's site; said site also to contain not less than an acre, and to be as nearly square in form as the circumstances will admit. The decision of the county superintendent is REVERSED.

HENRY SABIN,

June 7, 1888. *Superintendent of Public Instruction.*

P. O'CONNOR, JR., v. DISTRICT TOWNSHIP OF BADGER.

Appeal from Webster County.

JURISDICTION. In most matters with which boards have to do under the law, their authority and responsibility are absolute, and their jurisdiction is complete and exclusive.

JURISDICTION. A former order of the board, or a decision of the county superintendent on appeal, will not operate to prevent the board from exercising its discretion anew, when good reasons exist for such action.

REHEARING. To obtain a rehearing the necessity must be clearly shown.

DISCRETIONARY ACTS. In the exercise of discretion, the benefit of every reasonable doubt must be given in favor of the correctness of official acts.

APPEAL. The hearing is not to be conducted by a rigid adherence to the technical forms and customs which prevail in the courts.

At a special meeting of the board held February 10, 1888, it was voted to remove the schoolhouse in subdistrict number seven, forty rods north from its present site. P. O'Connor, Jr., appealed to the county superintendent, who heard the case on the 23d day of April and affirmed the action of the board. P. O'Connor, Jr., appeals.

The proceedings in this case are regular and the facts admitted by both parties. The only point in dispute is this: On the 10th day of November, 1887 the county superintendent heard the same case and rendered his decision reversing the action of the board. As the board did not see fit to appeal, and as no material changes have taken place in the subdistrict, it is claimed that the decision of the county superintendent rendered November 10, 1887, must be considered as final, and that no further proceedings can be had in the case. If this allegation is true then the county superintendent committed error in not dismissing the case.

Let us examine it a moment, that we may arrive at the intent of the law. It is plain that the law reposes great confidence in the discretionary acts of a board of directors. The instructions from the department of public instruction to county superintendents have always been that such discretionary acts are to be affirmed unless it can be very clearly shown that the board has in some way abused its powers; if there is a doubt even, the board is to have the benefit of it. It has become a well established principle that the conduct of the schools and the location of schoolhouses should be left with those officers who have the closest relation to the people for whose benefit the schools are maintained. With this principle this department is not willing to interfere.

Is it right, then, that in this present case because the county superintendent reversed the board in November, 1887, it should be left without further remedy? We think not. After its former action was reversed, the board had its choice of three courses of action; it was bound to take the one which it believed to be for the best interests of the subdistrict.

It could ask for a rehearing, but to obtain that it must be able to show that some very grave mistake had been made, or that it had discovered some additional evidence which could not have been presented before by using reasonable diligence.

It could appeal to the superintendent of public instruction, but in that event it must base its case wholly upon the evidence as presented before the county superintendent, as this department has no right to hear additional testimony.

It could begin the case *de novo*, amend its record if it was faulty, supply omissions, introduce new testimony, and perfect its proceedings in such ways as to obtain if possible a different decision from the county superintendent, or so as to make a stronger case before the superintendent of public instruction if either party found it necessary to appeal to him.

In this case the board chose the last remedy, and we think it was wise in doing so, as the most ready manner of obtaining a final adjudication of the whole matter

After careful study of the authorities cited by counsel, we can only reach this conclusion. If the aggrieved party fails to appeal within the thirty days allowed by the law, the decision of the county superintendent becomes final as far as that particular case is concerned; but we find nothing in the law to warrant the conclusion that a reversal by the county superintendent acts as a bar to any further proceedings because the district board did not then and there take an appeal to the superintendent of public instruction. Such a conclusion would defeat the ends aimed at by the law in placing the management of the schools in the hands of the school officers as chosen by the people. The county superintendent and the superintendent of public instruction, in hearing these appeal cases have the jurisdiction somewhat, of a court of equity and are not bound by a rigid adherence to the technical forms and customs which prevail in the courts of justice.

In reaching this conclusion we are supported by the case of *Morgan v. Wilfley et al.*, 70 Iowa, 338. "The power to redistrict and change subdistricts is conferred upon the board by the statute, and action in that direction, for sufficient cause, cannot be considered as unauthorized." The power to change or fix the schoolhouse site is conferred in the same manner. Further: "The board of directors cannot be so fettered by its prior action, or by legal proceedings, that it may not, at any time, for sufficient cause, redistrict the township, as in its best judgment may be demanded by the interest of all the children of the district." The principle here enunciated is so broad that it applies to all the actions of the board, and it is not necessary to dwell upon it.

In regard to the merits of this case, there is nothing to be said. There is no evidence to show that the board abused its authority, and consequently no reason for setting its order aside. The decision of the superintendent is AFFIRMED.

HENRY SABIN,

July 9, 1888. *Superintendent of Public Instruction.*

MICHAEL MELENEY v. DISTRICT TOWNSHIP OF ERIN.

Appeal from Hancock County.

DISCRETIONARY ACTS. May not be reversed unless the proof is conclusive. The board must bear any blame that may attach to an inexpedient action.

APPEAL. An appellate tribunal may not assume original jurisdiction. The order of the board must be affirmed unless it is proved beyond doubt that a reversal is necessary.

DISCRETIONARY ACTS. The county superintendent, having only appellate jurisdiction, should not reverse discretionary acts of the board without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving its action.

The transcript in this case shows that on the 19th day of March, 1888, the board voted to locate the new schoolhouse in subdistrict number six, as near the corner of sections 3, 4, 9 and 10 as practicable. April 23, 1888, it voted to locate the house on the southeast corner of the southwest quarter of section four. From this decision Michael Meleney appealed to the county superintendent, who, after hearing evidence in the case, reversed the action of the board and relocated the site for the new schoolhouse near the southeast corner of the northwest quarter of section nine From this decision William Boldt appeals.

The law vests very large discretionary powers in the board. It is chosen by the people for a specific purpose and is directly responsible to the people for the manner in which it discharges its duties. Parties feeling themselves aggrieved by the action of the directors have the right of appeal, but they must make it plain that their grievance is something more than personal in its nature; that it consists in some violation of the law, or some abuse of discretion on the part of the directors, such as being actuated by selfish or improper motives or neglecting to exercise due discretion in guarding the interests of the entire district.

The county superintendent, it is true, may determine whatever questions the board had determined, but he is not to put himself in the place of the board, nor is he to assume, except in extreme cases, the responsibility which belongs to it. It is not expected that he will assume original jurisdiction and reverse its action upon his individual judgment. He may even think that if he had been a member of the board he would have voted differently from the majority, or that some other course than that taken by the board would have been better for the interests of the district, and yet feel compelled to affirm the action of the board. He may not reverse its action unless it is proved beyond doubt that it violated law or in some manner abused its discretion. If there is any doubt, the board is to have the benefit of that doubt.

The township of Erin consists of five subdistricts. Three of the directors voted to locate the new house in subdistrict number two, on the site in question, and two favored a site one-half mile farther south. There was very little testimony introduced in the trial before the county superintendent. While it is evident that the site chosen by the majority of the directors is in some respects not the most desirable for a schoolhouse site, it is uncertain whether there is any better site in that neighborhood. There is nothing to show that the board has violated any law or in any way abused its discretion.

The proceedings of the county superintendent in this case have been in all respects in accordance with the requirements of the law, and he was undoubtedly actuated by the best motives. We cannot however affirm his decision without violating a well known rule of law and reversing the policy which this department has followed without an exception. The decision of the county superintendent is REVERSED.

HENRY SABIN,
Superintendent of Public Instruction.

September 17, 1888.

SAMUEL WALKER v. J. S. CRAWFORD, COUNTY SUPERINTENDENT.

Appeal from Cass County.

CERTIFICATE. The county superintendent is his own judge as to how fully he will give the applicant reasons for the refusal of a certificate.

CERTIFICATE. The county superintendent is charged with the responsibility of refusing to issue a certificate to any person unless fully satisfied that the applicant possesses the essential qualifications demanded of teachers by the law.

DISCRETIONARY ACTS. Unless a marked violation of the large discretion vested in the county superintendent is proved clearly and conclusively, his action in refusing or revoking a certificate will not be interfered with on appeal.

CERTIFICATE. The decision of a county superintendent refusing a certificate will not be interfered with on appeal unless it appears that he acted from passion or prejudice.

This case arises from the refusal of J. S. Crawford, county superintendent of Cass county, to grant a certificate to Samuel Walker to teach in the schools of said county. The case was reheard on the 1st day of December, 1888, by way of appeal, the superintendent affirming his former decision. Samuel Walker appeals.

Section 1766 requires the county superintendent to examine each candidate desiring to teach in the public schools of the county, in certain branches enumerated therein, with special reference to his competency and ability to teach the same. But section 1767 still further directs that the county superintendent must satisfy himself that the applicant possesses a good moral character and the essential qualifications for governing and instructing children and youth. Here then, are three distinct qualifications to be investigated and determined by the county superintendent before he issues the certificate. My predecessor very pointedly says in a written opinion on file in this office: "Under the law the county superintendent must be satisfied that you (the candidate) possess all the qualifications enumerated by the law."

In this case it is not claimed that the appellant is deficient in the branches usually taught in the public schools. Neither is it charged that he does not possess a good moral character. The only point in question is his ability to instruct and govern children and youth. We confess that this is an exceedingly difficult point to determine in many cases. The surest way undoubtedly is to visit and inspect the school, but we think the county superintendent took the next best way when he drew the candidate into a conversation and allowed him to express himself freely and without reserve. Certain traits of character most essential to a teacher cannot be ascertained by a written examination alone.

At the time of the trial on appeal the county superintendent was placed on the stand as a witness for the appellant. In the course of his testimony he made this statement: "I refused Mr. Walker a certificate because I thought, and still think, Mr. Walker did not have judgment, a well balanced mind, and common sense, to teach a good school." It is not the duty of the superintendent of public instruction to try this case *de novo* in order to determine the correctness of this conclusion. We are not called upon to pass upon the fitness or unfitness of Mr. Walker to teach in the schools of Cass county.

Did the county superintendent err, in that he was actuated by wrong motives? If through passion or prejudice he refused Mr. Walker a certificate he did him an injustice, and his decision should be reversed. The existence of such a ruling motive would show itself somewhere in the evidence. We have read the transcript several times with care, and we fail to find any disagreement existing between the parties previous to, or at the time the appellant was first examined, or that Mr. Crawford has spoken unkindly of Mr. Walker or shown a disposition to injure him in any way. It was competent for the appellant to show clearly at the trial that the county superintendent was prejudiced against him to such an extent as not to do him justice, this he has failed to do by any reliable testimony. The weight of the testimony is to the effect that the county superintendent was endeavoring to do his duty as a school officer and in this the superintendent of public instruction must sustain him.

The counsel for the appellant claims that the county superintendent erred in not informing the applicant upon what grounds he refused him a certificate. The testimony of Mr. Frost, from his long experience in the office of county superintendent, has great weight. We agree with him that it is usually better to inform the applicant frankly and fully why the certificate is refused, but cases may arise in which it is as well not to do this. The law is silent upon this point, the county superintendent must be his own judge of what it is best to do. We do not think the refusal in this case is an error on the part of the county superintendent.

It is also alleged on the part of the appellant that "the county superintendent made a wrongful decision upon the facts in the case." The appellant introduced evidence to show that he had taught a fairly successful school, and that he was in good repute as a teacher in his own neighborhood. All this was pertinent to the question at issue, but if the conversation and actions of the appellant made such an impression upon the mind of the county superintendent at the time of examination that this evidence even could not overcome it, the county superintendent could not consistently do otherwise than as he did.

The discretion vested in the county superintendent by the law is very large, and for this purpose, that he may guard the public schools against the intrusion of persons unworthy or unfit for the office of teacher. The department of public instruction cannot release him from his responsibility, nor can it interfere with his discretionary acts except upon the clearest and most convincing proofs of violation of law, or of the influence of passion or prejudice in the performance of his official duty.

The appellee, on the other hand, seems to argue that the actions of the county superintendent, in refusing to grant a certificate, cannot be interfered with by

the superintendent of public instruction. In 1867, Hon. D. Franklin Wells, then superintendent of public instruction, obtained an opinion from the attorney-general of the state, Hon. F. E. Bissell, upon this point. The following extract from that opinion is answer to each of the claims just considered: "Chapter 52, laws of the tenth general assembly, provides that the superintendent of public instruction shall be charged with the supervision of all the county superintendents, and shall determine all cases appealed from the decision of the county superintendent, I hold that under the above provisions, the right of appeal is clearly inferrable, if not directly given to any one aggrieved by the refusal of the county superintendent to give a certificate, or by the revocation of a certificate. The power should, however, be very cautiously exercised and the decision of the county superintendent should not be interfered with except in case of a clear violation of duty, or when the act was the clear result of passion or prejudice."

After a careful review of the testimony and the able arguments submitted to us, we do not find sufficient reason for reversing the decision made heretofore.

AFFIRMED.

HENRY SABIN,

February 4, 1889. *Superintendent of Public Instruction.*

PERRY HODGE v. R. B. YOUNG, COUNTY SUPERINTENDENT

Appeal from Dickinson County

APPEAL. An appeal will lie to determine conclusively whether the provisions of the law have been complied with.

TERRITORY. When a transfer is sought, no appeal will lie to control the discretion of the county superintendent or board.

TRANSFER. The natural obstacle must be impassable to such a degree as to remain an actual impediment to attendance.

On the 18th day of February, 1889, R. B. Young, county superintendent of Dickinson county, issued an order that the S. E. quarter and also the N. E. quarter of Sec. 24, 99, 36, Center Grove township, should be set off to Richland township, for school purposes under section 1797. Perry Hodge appeals from this order.

It is also in evidence that the board of the district affected gave its consent to the transfer of territory. As this is a case in which the county superintendent has original jurisdiction to act with the board of the district affected, no appeal will lie from his action to control his discretion. It is competent, however, for the superintendent of public instruction to entertain an appeal for the purpose of ascertaining whether the provisions of section 1797 apply. If there is clear evidence that the provisions of said section do not apply, the order of the county superintendent must be set aside. There seems to be clear proof that such a natural obstacle as the law contemplates, does not exist in this case. There are in evidence the affidavits of certain parties who claim to be well acquainted with the territory transferred by said order, to the effect that the slough in question is by no means impassable to such a degree as to act as an obstacle to children attending school in Center Grove township, in the meaning contemplated by the law. It is held that there is no power under section 1797, to transfer said territory. The order of the county superintendent, dated February 18, 1889, is therefore declared void and

REVERSED.

HENRY SABIN.

May 18, 1889. *Superintendent of Public Instruction.*

G. W. DAVIS *et al.* v. DISTRICT TOWNSHIP OF LINN.

Appeal from Linn County.

APPEAL. Will not lie to control the action of a board or of the county superintendent, where concurrence is provided for.

TUITION. To enable the district in which the children reside to collect tuition. all the requirements of the law must first be fulfilled.

At its regular meeting on the 18th of March, 1889, the board passed a resolution excluding from the privileges of the school in subdistrict number seven, children from the independent district of Laurel Hill in Jones county who had from time to time for many years, been allowed to attend the school in said subdistrict number seven. On the 13th of April the board considered a petition of parties in the adjoining district of Laurel Hill desiring to send to the school in Linn township, and passed an order refusing to admit their scholars. From this action, G. W. Davis and others appealed to the county superintendent who heard the case on the 9th of May, affirming the order of the board From his decision G. W. Davis appeals.

The attendance of scholars living in an adjoining district is governed by section 1793. By the portion of the section to which this appeal relates, children may attend in another district on such terms as may be agreed upon by the respective boards. In the history of this case it is not shown that any action was taken by the board of Laurel Hill as to agreement regarding terms of attendance The board of the district township of Linn refused to admit the scholars in question. It is from this order, an initial action, that appeal was taken.

At the trial before the county superintendent a statement of facts was submitted and was agreed to by both parties to the appeal, as a basis upon which the appeal should be heard. At this point the board by its attorney filed a demurrer, urging that the county superintendent could not acquire jurisdiction; that the action of the board complained of was not subject to revision upon appeal; and asking the county superintendent to dismiss the case for want of jurisdiction. The demurrer was overruled, the case was tried on the agreed statement of facts, and the order of the board affirmed. Did the county superintendent err in overruling the motion to dismiss the case for want of jurisdiction? We think he did.

If the boards fail to agree upon terms of attendance, certain conditions regarding distance from the respective schools being fulfilled, as they are in this case, section 1793 itself provides the next step to be taken. The county superintendent of the county in which the children reside may give his consent with that of the board of the district where the children desire to attend, admitting them. But from the refusal of the board to admit the children it is held and has been uniformly held in opinions by this department, that appeal will not lie It has always been conceded to be the intention of the lawmakers to leave with the board of the district in which the school is maintained, the matter of determining finally and conclusively, if it chooses, that scholars shall not be admitted under the provisions of section 1793. If its consent is withheld, neither the courts of law nor any appellate tribunal may set aside its order of refusal, and compel it to admit outsiders and accept as compensation for their instruction the amounts fixed by section 1793. We have referred to this matter at such length, because the counsel for the appellant urges the claim that the case should be remanded for a new trial.

We are compelled to find that there are but two methods in law, by which attendance in subdistrict number seven may be secured for their children by the appellants. The two boards may agree as to the terms of attendance. Or after they have refused to agree the concurrent consent of the county superintendent of Jones county and the board of the district township of Linn, will entitle the children to attendance and bind their home district for the expenses of their instruction in the manner provided by section 1793. But appeal will not lie to control the action of either board, or of the county superintendent.

REVERSED AND DISMISSED.

HENRY SABIN,

August 6, 1889. *Superintendent of Public Instruction.*

J. S. FOLSOM *et al* v. DISTRICT TOWNSHIP OF CENTER.

Appeal from Cedar County.

MODIFICATION OF DECISION.

APPEAL. A decision may be modified upon proof that a change in its terms is desirable.

The decision given in the above entitled appeal, dated June 7, 1888, is hereby modified as follows:

We are assured that the provisions of the decision have been complied with, the site having been located and the schoolhouse built thereon in strict conformity with the terms of the decision. It is now desired by all parties to change the form of the site, slightly. Our decision referred to above is therefore modified so that the site may extend about eighteen rods south of the limitation made by the former decision, and shall be about twenty-two rods long, six rods wide at the south end, and nine rods wide at the north end.

HENRY SABIN,

December 30, 1889. *Superintendent of Public Instruction.*

ISHAM WATKINS v. INDEPENDENT DISTRICT OF EMPIRE.

Appeal from Marion County.

APPEAL. An appeal will not lie from an order of a board initiating a change in boundaries, where the concurrence of the board of an adjoining district is necessary to effect the change.

APPEAL. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

JURISDICTION. The jurisdiction of an appellate tribunal is not greater than that of the board from whose action the appeal is taken.

On the 16th of September, 1889, the board of the independent district of Highland determined to notify Isham Watkins of Empire district, that his children could not any longer attend the school in Highland district. The records show that it was willing that he should be attached to Highland district. This was taken as an initiatory movement. Isham Watkins petitioned the board of the Empire district to set off the north half of northeast quarter of section 25, 75, 21, to the independent district of Highland. The petition was rejected, in effect the Empire board refused to concur. An appeal was taken to the county superintendent, who ordered that the northeast quarter of northeast quarter of section 25, be detached from the independent district of Empire and attached to the independent district of Highland.

Of the several questions involved in this case it is necessary to discuss only one. Did the county superintendent exceed his jurisdiction? The board of Highland initiated an action. The board of Empire district must either concur or nonconcur, and from its action an appeal could be taken. If it did not choose to accede to the proposition of the Highland district, then action in that particular ended with its vote to nonconcur. If it had a different proposition to make, as for instance granting forty acres, it could only initiate a movement to that effect, and leave it for Highland district to act, and from the action of the latter board an appeal could then be taken.

In this case the county superintendent initiates a new action, and leaves it for Highland district to act. Now if this action is allowed to stand, any one aggrieved may take an appeal from the action of the board of the Highland district. He would then have an appeal brought before the county superintendent from an action which he himself initiated. It might be further argued that if the county superintendent has original jurisdiction, then this appeal cannot lie, as an appeal

can be taken only from the order of the board completing the action. The precedents established have been followed closely by this department and we can see no reason for breaking away from them.

It is held that in cases requiring the concurrent action of two boards, the board completing the action can only concur or nonconcur. Any action involving a new proposition initiates a new case, which must be passed upon by the other board concerned in the matter and from which an appeal can be taken. It is further held that the county superintendent upon appeal is limited to reversing or affirming the action of the board completing the action, and that he cannot assume original jurisdiction and do what the board appealed from could not do.

It seems apparent that Mr. Watkins has not reasonably good school facilities and we regret that we are compelled to set aside the decision of the county superintendent. He was actuated by laudable motives and was looking for the best interests of the children in this case. We are, however, forced to the conclusion that the county superintentent erred in assuming original jurisdiction.

REVERSED AND DISMISSED.

HENRY SABIN,

March 18, 1890. *Superintendent of Public Instruction.*

ROBERT MAXWELL v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Union County.

PROCEEDINGS. The regularity of all the proceedings will be presumed upon. This is true in an especial sense when the records are more than usually complete.

TEACHER. In the trial of a teacher the board is bound carefully to protect the interests of the district and to seek the welfare of the school, as well as to regard the rights guaranteed to the teacher.

NOTICE. Appearance at the trial is a complete waiver of notice.

RECORDS. The record of the secretary must be considered as evidence, unless there is proof of fraud or falsehood.

On the 9th day of December, 1889, the secretary acting upon a petition signed by five residents, called a meeting of the board for December 14, to examine the teacher of subdistrict number eight. A notice was also served upon the teacher the same date, signed by secretary, both the call and the notice being spread upon the records in due form. The meeting was held on the 14th of December. The records show that the appellant was present and objected to the consideration of the charges, as the proceedings were not in accordance with section 1734. At the same time he demanded a copy of the charges and that one week be given him in which to prepare his defense, which demand was complied with and the board adjourned to December 21.

If the appellant had moved to dismiss the case, it would not have been an error to sustain the motion, but he submitted to the jurisdiction of the board and obtained a continuance of the case until December 21 It must be held that by this action he waived any defect or irregularity in the jurisdiction of the board in this case The purpose and object of the process, as pointed out in section 1734, was fully accomplished. See *Wilgus et al., v. Gettings et al.,* 19 Iowa, page 82 At the meeting held December 21, the board voted to discharge the teacher. An appeal was taken to the county superintendent who affirmed the board. The appellant appeals to the superintendent of public instruction.

The only question before the county superintendent was whether the conditions as prescribed in section 1734 were fully complied with. It is alleged that while the teacher was present, he was not allowed to make his defense. The secretary's transcript furnishes the only means of determining this. The records show that he was allowed to cross-examine witnesses, and they do not show that he was barred from offering evidence had he chosen to do so. There can be no question of the power of the board under the law to discharge the teacher. It is held

in case of *Kirkpatrick v. Independent District of Liberty*, 53 Iowa, 585, that the board does not act as a court, in any strict sense, and is not bound by the rules applicable to a court. The intent of the statute is evidently, while it guards carefully the rights of the teacher, to enable the board to discharge a teacher who, after a careful investigation, is determined to be unfit for the position. It is termed "a simple and inexpensive way of determining rights" It is claimed by the counsel for the appellant that when a certain mode is prescribed in determining a case not in the usual course of the common law, such mode must be followed, and reference is made to the case of *Cooper v. Sunderland*, 3 Iowa, 125 But it is held in the same case that when sufficient appears on the face of the records to give it jurisdiction under the law conferring the power, then the presumption attaches in favor of the remainder of the proceedings of the court If the action of the appellant in appearing for trial gave the board jurisdiction, then all the proceedings must be held to be regular The discharge of a teacher is largely within the discretionary power of the board. It is to guard the rights of the district and the interests of the school, as well as the rights of the teacher. After a full and fair investigation it is its duty to act as it deems best, under all the conditions and circumstances of the case. See *Smith v. District Township of Knox*, 42 Iowa, 522. This being the case it is the duty of the county superintendent not to interfere with the action of the board unless he is convinced that it in some way abused its discretion. He is right in sustaining the board even though as an individual he would have preferred some other action on its part.

Our conclusion is, after a careful consideration of the matter and after reading the transcript with unusual care, that the defendant had a fair and impartial trial, and that the terms of the law were substantially complied with. The decision of the county superintendent is AFFIRMED.

HENRY SABIN,

June 12, 1890. *Superintendent of Public Instruction.*

KELLEY AND SMITH v. DISTRICT TOWNSHIP OF EDEN.

Appeal from Decatur County.

BOARD OF DIRECTORS. After such a decision as prevents any action of the board until some material change occurs, in order that the board may act anew changes of such a character as to obviate to a large extent the objections that previously existed, must have taken place.

The main points in this case are simply these: On the 8th day of February, 1890, the board voted to abolish subdistrict number eight. Appeal was taken to the county superintendent, who reversed the action of the board An appeal was then taken to the superintendent of public instruction.

This department has held that when a case involving a change of subdistrict boundaries has been adjudicated by the county superintendent, reversing the action of the board, and has been affirmed when brought before the superintendent of public instruction, upon appeal, it cannot again be brought upon appeal, unless it can be shown that some material change affecting the conditions of the case has taken place since the date of the former decision It is proper to say that this holding is based upon opinions uniformly given by the former superintendents of public instruction, and on file in this office

As this case was substantially before this department in March, 1888, it is first in order to determine whether any material change has taken place affecting the conditions of the case, since that date. By a material change we mean such a change as would obviate to a large extent the objections raised against the action of the board at that time.

The erection of the bridge over Little river does not, according to the testimony, lessen the difficulty of attending school on the part of certain scholars, as

the bottom land is impassable during high water. There has been no decrease in the number of pupils which renders it expedient to abolish subdistrict number eight. The taxes in Eden township for school purposes are not in excess of what they were in 1888.

We are unable to find, after carefully reading the testimony, that there has been any material change affecting this case since our decision rendered March 16, 1888. This conclusion renders it unnecessary to examine other points raised by counsel.

AFFIRMED AND DISMISSED.

HENRY SABIN,

June 23, 1890. *Superintendent of Public Instruction.*

MICHAEL DONELON v. DISTRICT TOWNSHIP OF KNIEST.

Appeal from Carroll County.

SUBDISTRICT BOUNDARIES. The boundaries of subdistricts may be changed or new subdistricts formed, only at the regular meeting of the board in September, or at a special meeting held before the following March.

On the 24th of March, 1890, the board made an order changing the boundary between subdistricts four and five. Michael Donelon, residing upon the territory transferred, appealed to the county superintendent, who on the 14th of April affirmed the order of the board, and from his decision Mr. Donelon appeals.

The action of the board called in question was taken under section 1796, the first of which section reads: "The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that purpose, divide their township into subdistricts, etc." It has been continuously held by this department ever since the enactment of the provision of law quoted above, that as changes in the subdistrict boundaries under section 1796 do not take effect until the following subdistrict election, it is therefore the manifest intention of the law as indicated in the reading of the portion of section 1796 we have quoted, that said changes should be ordered at the regular meeting of the board in September, or at a specially called meeting held long enough before the subdistrict election to allow time for notices to be given for the election of subdirectors, and that the law does not give the board power to change subdistrict boundaries between March and September, but only between September and March. If this is the meaning of the law it is decisive of this case, and we shall be compelled to dismiss the case for want of jurisdiction.

A careful examination of the question leads us to the same conclusions uniformly announced by our predecessors. We are able in no other way to explain the wording of the section. It seems plain that the law intends to impose the limitation upon the board so clearly indicated by the phraseology of section 1796. Attention is invited to the decisions found on pages 25, 26 and 63, School Law Decisions of 1876. It is also worthy of notice that this principle has been considered to be so fully established in practice and so well understood, that cases referring to the universally admitted fact have been omitted from the three compilations of decisions made since 1876. This case is the first appeal for many years past reviving the question.

We are aware that the case in 70 Iowa, 338, may be urged as affording opportunity for a different view than the one taken by us. But it must be observed that the matter at issue in that case is whether the board has power to exercise its discretion in so full and complete a manner as to dispense entirely with a new subdistrict recently created by a former board, and thus by a single order opposite in intention to nullify all that had been done previously in regard to change of boundaries. It was urged that the board does not have such power after the subdistrict has acquired a legal existence. The effect of the decision is to establish the power of the board to exercise its fullest discretion in determining the

necessity for change of boundaries, subject to the remedy of appeal. We cannot interpret the decision as setting aside that provision of 1796 which directs that such changes in boundaries shall be made at the regular meeting of the board in September, or at a special meeting thereafter, obviously not to be held later than the first Monday in March.

It is apparent then that the action of the board complained of in this case was not in accordance with law, and hence was null and void. It is fortunate that the board has an opportunity within a few weeks to take such action as may then seem to it for the best interests of the district and all concerned.

REVERSED AND DISMISSED.

HENRY SABIN,

August 23, 1890. *Superintendent of Public Instruction.*

E. J. HOSKINS *et al.* v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Shelby County.

DISCRETIONARY ACTS. The appellate tribunal is required to decide only whether the action complained of in the affidavit of appeal is proved to be of such a nature as to compel a reversal of such action.

APPEAL. It is not intended that the superintendent of public instruction shall hear an appeal case *de novo*. He is confined to the record of the case as heard before the county superintendent.

APPEAL. It is not the purpose of an appeal to secure a decision as to which of two sites is preferable, or as to whether a better site might not have been found. If the site chosen is proved to be unsuitable, or an abuse of discretionary power is clearly shown, then the order of the board may be set aside, but not otherwise.

DISCRETIONARY ACTS.. Since the board has original jurisdiction, its discretionary acts should not be interfered with by an appellate tribunal, although not agreeing with its judgment, unless the board violated law, showed prejudice or malice, or abused its discretion in such manner as to require interference

On May 19, 1890, the directors passed an order locating the schoolhouse site in subdistrict number seven, in the northwest corner of section 36. From this order E. J. Hoskins appealed to the county superintendent, who affirmed the action of the board. Appeal was then taken to the superintendent of public instruction.

Exclusive power to locate schoolhouse sites is vested in the board. Such power is nowhere given to the county superintendent. The only limitations imposed upon the board are that it shall observe the geographical position and the convenience of the people. If any one is aggrieved by the action of the board he may appeal to the county superintendent, who has the power after a hearing of the case to reverse its action, provided he is satisfied beyond a reasonable doubt that it has violated law, or abused its discretion in some way, as by choosing a site too far from the geographical center or one not convenient to the people.

It is not claimed in the present case that the board violated law in any way. The difference between the two sites in question is only eighty rods and there is no preponderance of evidence to show that one is much more suited to the convenience of the people than the other. It is not the intention of the law that the county superintendent should place his private judgment over against the judgment of the board. His duty is to determine whether the grievance complained of in the affidavit is proved to be of such a nature as to warrant him in interfering with the action of the board. His own opinion that some other course of action would have been better should not be allowed to bias his decision. The counsel for appellants urged at the trial before the superintendent of public instruction that they could not get a trial of facts before the county superintendent; they desired him to ascertain which of the two sites is more preferable as a site for a building, and to base his decision upon that alone. The affidavit upon which the case was tried before the county superintendent alleges in substance that the site chosen by the board is for various reasons unsuitable for school purposes. The

issue was joined upon this fact, and the county superintendent in his decision finds that while the site contended for by the appellants is in some respects the better of the two, the one selected by the board is not unsuitable for school purposes and constitutes what he considers a fair average site. Under such conditions he very properly affirmed the action of the board.

The counsel for appellant places great stress upon the decision of the supreme court in the case of *Atkinson et al. v. Hutchinson et al.*, 68 Iowa, 161, to prove that the superintendent of public instruction is not of necessity confined to the exact record made before the county superintendent, but that his decision should be based upon all essential, existing facts. It is supposed that such facts are brought out upon trial before the county superintendent and appear in the transcript of evidence sent up with the case. If between the time of trial before the county superintendent and the trial before the superintendent of public instruction some essential evidence comes to light which could not from its nature have been known at the time of the trial before the county superintendent, it would perhaps be proper for the superintendent of public instruction to take it into consideration before rendering his decision. In the case cited, at that time before the supreme court, it was contended that certain unusual changes took place prior to the hearing before the superintendent of public instruction, which affected very materially the condition of affairs. The court in rendering its decision took it for granted that these changes were known to the superintendent of public instruction at the time he decided the case. If the supreme court had intended to convey the idea that it is the province of the superintendent of public instruction to hear the case *de novo* in the usual acceptation of that term, it would hardly have said that the legislature designed to provide an inexpensive and summary way of disposing of these questions when it afforded aggrieved parties the right of appeal. Indeed if the superintendent of public instruction had the power to discard the trial before the county superintendent, and to send for witnesses and papers from remote sections of the state, as would be necessary in hearing these cases *de novo*, this would prove the most expensive and tedious way of disposing of these questions which it would be possible to devise.

The decision of the county superintendent is AFFIRMED.

HENRY SABIN,

October 9, 1890. *Superintendent of Public Instruction.*

HEFFERN AND VAN PATTER v. DISTRICT TOWNSHIP OF TIPTON.

Appeal from Hardin County.

SCHOOLHOUSE TAXES. The board may not refuse to expend schoolhouse funds for the purpose for which they were voted.

MANDAMUS. To compel the performance of an official duty not involving the exercise of discretion, a writ of mandamus is a speedy remedy.

The affidavit in this case recites in effect that at their meeting in March, 1889, the electors of subdistrict number one voted a tax of two hundred dollars on themselves to purchase a site near the center of the subdistrict, remove the schoolhouse, and procure a highway to the same. At its meeting March 17, 1890, the board voted to lay on the table a petition asking for immediate action. The superintendent affirmed the action of the board. Heffern and Van Patter appeal.

There is no doubt as to the facts in this case. The tax of two hundred dollars was voted, was levied by the supervisors, and part of it has been collected and is now in the hands of the district treasurer In such a case there is no provision of law by which the board may be excused from expending the money for the purposes for which it was levied. This duty is not discretionary but mandatory. The board, however, is entitled to a reasonable length of time, and may use its discretion as to the best and most economical way of expending the money

provided they regard strictly the purpose for which it was raised. It does not appear that the board in laying the petition upon the table was actuated by any desire to delay action unreasonably or to defeat the wishes of the electors. The board has also a large discretion when determining the location of a highway.

We are disposed after a careful consideration of this case to remand it to the county superintendent, to be by her remanded to the board with instructions that it proceed at the earliest date possible to carry out in good faith the wishes of the electors of subdistrict number one. If it fails to do this the most speedy remedy for any one aggrieved is an application to the court for a writ compelling the board to act.

AFFIRMED AND REMANDED.

HENRY SABIN,

March 24, 1891. *Superintendent of Public Instruction.*

ELISHA AND ELDA TANNER v. INDEPENDENT DISTRICT OF CLARENCE.

Appeal from Cedar County.

AFFIDAVIT. A technical error in the affidavit not prejudicial to either party will not defeat the appeal.

AFFIDAVIT. The affidavit may be amended when such action is not prejudicial to the rights of any one interested.

SCHOOL PRIVILEGES. The law is to be construed in the interest of the child. The actual residence of the scholar at the time will establish the right to attend school free of tuition.

The board excluded Elda Tanner from school until such time as her tuition is paid, on the ground that she is a non-resident pupil. The county superintendent on appeal reversed the action of the board and appeal was taken to the superintendent of public instruction. It was claimed before the county superintendent that inasmuch as the affidavit upon which the appeal was based was without the seal of the notary public, that there were no grounds upon which the appeal could be legally based. While it is true that the notarial seal is necessary to constitute an affidavit, in this case the notary public was present at the time of trial and under oath testified that the omission of the seal was only an oversight on his part, and that the persons therein designated did make oath to the paper and affix their signatures to it in his presence, then he also there affixed the notarial seal. It is held that since no interests were prejudiced by the error which at the best was only technical, that the county superintendent did not commit an error in overruling the motion to dismiss the case.

The allegation of facts made by Elda Tanner are that she is sixteen years of age, that her father and mother have parted, and that for ten years or more she made her home in the family of Mrs. McCartney in Massilon township. Before she came to Clarence she had an understanding with her father that she was to care for herself thereafter. She also claims that being thus emancipated from her father's control, she chose to become a resident of Clarence, and as an actual resident of that school district is entitled to the privileges of school under the provisions of section 1794.

It is of interest to ascertain how far such an agreement constitutes emancipation of a minor child. It is held in 1 Iowa, 356, that in the absence of statutory requirements such emancipation need not be evidenced by any formal or record act, but may be proved like any other fact. The evidence of Elda Tanner in this case is corroborated by that of her father, and of Mrs. McCartney who was present during the conversation. We are disposed to hold that Elda Tanner under the facts as sworn to before the county superintendent was at liberty to choose such a place of residence as seemed to her most fitting. The evident and beneficent intent of the law is that no child shall be deprived of school privileges. The father of a family may move into the district from an adjoining state, and

although certain time must elapse before he is entitled to vote he may place his children in school the very day he arrives. In the same spirit it has been held that children living in families in which their work compensates for their board, are actual residents and are entitled to school privileges. The law is to be construed in their interests. The district is entitled to have such children enumerated, if they are thus actual residents at the time the school census is taken. We do not undertake to decide that parents or guardians can transfer children from one district to another for school purposes alone, but only that those who are actual residents under the provisions of the law may attend school without the payment of tuition. While it is true in general that the residence of a child is the same as that of the parents or guardian, the law evidently contemplates exceptions to this general rule and leaves the right to attend school to be established by the actual residence of the child. Any other construction would not be in accordance with the spirit of the law, and would deprive many children of the right to attend the public schools.

In this case the question of residence is largely one of intent. The testimony of Elda Tanner is to the effect that she was at the time of attendance an actual resident of Clarence, and had no other residence. It was competent for the board to disprove this, but we do not find the evidence to that effect conclusive

It is held that the board erred in excluding Elda Tanner from school and the decision of the county superintendent is AFFIRMED.

HENRY SABIN,

April 24, 1891. *Superintendent of Public Instruction.*

J. C. REED *et al.* v DISTRICT TOWNSHIP OF EAGLE.

Appeal from Sioux County.

SUBDISTRICTS. The board should be encouraged in forecasting a general plan looking toward an ultimate regularity in the form of subdistricts.

SCHOOLHOUSE. There is no limitation in law as to the number of scholars to be accommodated, in order that the board may provide a schoolhouse.

SUBDISTRICTS Should be, if possible, compact and regular in form In well populated district townships, two miles square is considered a desirable area for each subdistrict.

SUBDISTRICTS. It is very important that subdistricts should be regular in form, and that where it is possible, schoolhouses should be located at or near geographical centers.

BOUNDARIES In the determination of district and subdistrict boundaries, temporary expenditures and individual convenience should be subordinated to the more important considerations relating to simplicity of outline, compactness of shape, uniformity of size, and permanence of sites and boundaries.

The above named district township coincides with a congressional township and consists of a single subdistrict. Portions of the district are yet sparsely settled. The board seems to have projected a plan to so locate schoolhouses when they must be supplied; that ultimately the township shall have nine subdistricts each of four sections.

On the 16th of March the board ordered a schoolhouse built at the center of the square of four sections in the southeastern corner of the township. From this action J. C. Reed appealed to the county superintendent who affirmed the order of the board. From this decision Mr. Reed appeals.

It was urged before the county superintendent that the board was prevented by the law from building a schoolhouse for the accommodation of a less number than fifteen of school age. The question now to be determined is whether the county superintendent erred in affirming the order of the board.

The board seemed to have outlined a policy of regarding each four sections as a separate division, to be provided with school advantages by itself. So far as

forecasting the probable form of subdistricts to be created in the future, we think the board might be guided in the location of schoolhouses at the present time by such policy, in order that ultimately each subdistrict will have the form desired and each schoolhouse will be located so as best to accommodate all patrons.

But while matters are in this progressive condition, we think the law does not confer power upon the board to apply the limitations of section 1725, and decide that until fifteen of school age are to be accommodated by the schoolhouse to be built no house may be erected. In this case for instance there is but one single subdistrict. The board may create other subdistricts provided fifteen of school age are included within the boundaries of each one so formed. But the board is not prevented from building more than one schoolhouse in any subdistrict. See 69 Iowa, 533. In the absence of specific instructions in connection with the voting of the taxes by the electors, the board is empowered to locate sites where in its judgment a schoolhouse seems to be most demanded.

We are unable to find from the evidence any reason to disturb the finding of the county superintendent and his decision is therefore AFFIRMED.

HENRY SABIN,

July 3, 1891. *Superintendent of Public Instruction.*

E. A. SHEAFE v. INDEPENDENT DISTRICT OF CENTER.

Appeal from Wapello County.

TEACHER. As an employe of the district the teacher may justly claim and expect to receive, the official assistance and advice of the board.

TEACHER. The law insures the teacher a fair and impartial trial, before he may be discharged.

The history of this case presents nothing unusual. The board voted to discharge the teacher upon certain preferred charges. The teacher appealed to the superintendent, who reversed the action of the board. The board appeals.

Section 1757 sets forth plainly the nature of the contract which is the evidence of agreement between the board acting for the district as one party, and the teacher as the other party. Section 1734 prescribes the only method by which the board may terminate the contract in advance or discharge the teacher. Both parties are equally bound by this contract, and as the board is a continuous body the election of an entire new board does not change the relations of the contracting parties. But inasmuch as the directors also act as judges whose duty it is to decide whether the contract shall be terminated, being themselves parties to the contract, it becomes them to weigh the evidence in the case with the greatest care and to give the teacher the benefit of any reasonable doubt. In the present case the forms of the law were complied with, and the teacher was permitted to be present and make his defense.

The transcript sent up by the county superintendent shows that one of the complaints upon which the teacher was tried, was signed by Jacob Ream, who also is one of the directors and acted as one of the judges in the case. This is strong presumptive evidence of prejudice on the part of one of the judges at least, and this evidence is strengthened by the fact that Jacob Ream is the father of John Ream whose punishment is made a matter of complaint. It is further strengthened by the fact brought out in evidence, that the present board was elected for the purpose and with the intent of displacing the teacher. The law is very careful to guard the rights of the teacher and to insure him a fair trial. That certainly can not be considered a fair trial in the eyes of the law, in which one of the judges who is to give his vote for acquittal or conviction is a complainant in the case and is as ready to pronounce the verdict before he hears the testimony as afterward.

The board invited the teacher to resign at its first meeting, and upon his refusal it proceeded at once to take steps to discharge him. Under certain circumstances this might be right, when necessary to relieve the school from a teacher proved to be incompetent or immoral. But general dissatisfaction as alleged in the petition or the desire to hire a lady teacher for the summer term, or to lessen the expenses of the district, can not be held to form any reason for discharging the teacher. The alleged punishment of the two boys is not proved in either case to have been unreasonably severe, to have been inflicted in passion, or to have resulted in any permanent injury. These punishments happened some weeks before and any complaint should have been made to the old board.

It does not appear necessary to enter any further into the merits of this case. It is held that no error was committed in reversing the action of the board and the decision of the county superintendent is therefore AFFIRMED.

HENRY SABIN,
Superintendent of Public Instruction.

October 20, 1891.

L. GOFF v. INDEPENDENT DISTRICT OF DALLAS.

Appeal from Marion County.

BOARD OF DIRECTORS. The board must endeavor to determine the actual intention of the electors, and to carry out their expressed wishes.

REMANDING OF CASES. Unless the transcript indicates clearly the manner in which the board understands the expression of the electors, an appellate tribunal on the trial will be compelled to remand the case for a more definite action.

MANDAMUS. The surest method to secure the performance of a mandatory duty is application to a court for a writ of mandamus.

At a meeting held August 12–13, 1891, the board voted in effect to sell the site at present occupied for schoolhouse purposes in or adjoining the village of Dallas, and to build two school buildings, one to be located at a site about one mile east of said village of Dallas, and another about twenty rods west of southeast corner of section two. Appeal was taken to the county superintendent, who affirmed the action of the board in locating the site in the west part of the district, but reversed its action in regard to the location east of the village of Dallas. Appeal was then taken to the superintendent of public instruction.

It is difficult to determine from the transcript sent up with this case, what were the intentions of the electors regarding the matter of a new schoolhouse, as expressed at the district meeting, March 9, 1891. The secretary's records show that the motion to erect a schoolhouse at each end of the district was voted down, as was also a motion to repair the old schoolhouse or to sell that and build a new one with two rooms.

The vote to raise a tax for the purpose of building a schoolhouse was declared carried, but the records do not show the amount to be raised by said tax, nor is there anything to show what amount if any was certified up to the board of supervisors. On the 20th of April the board voted that $1,500 was necessary for the erection of two schoolhouses, and on the 2d of May the electors voted bonds to that amount for schoolhouse purposes. There is nothing to show what form of ballots was used, or what was the intention of the electors in voting the bonds. When the intention of the electors in voting money for schoolhouse purposes is clearly known, it is the duty of the directors to proceed in accordance therewith.

We therefore deem it best to remand the case to the county superintendent, with instructions to remand it to the board in order that it may ascertain what was the intention of the electors and that it attempt in good faith to carry it out. If it fails to do this, the surest remedy is an application to the court for a writ compelling it to carry out the intention of the electors. REMANDED.

HENRY SABIN,
Superintendent of Public Instruction.

December 23, 1891.

C. A. WEBSTER v. INDEPENDENT DISTRICT NUMBER SEVEN.

Appeal from Winneshiek County.

DISCRETIONARY ACTS. To warrant interference with a discretionary act, abuse of discretion must be proved beyond a reasonable doubt.

DISCRETIONARY ACTS. It is not the province of an appeal to discover and to correct a slight mistake. The board alone must bear any blame that may attach to a choice deemed by appellants somewhat undesirable, but not an unwise selection to such a degree as to indicate an abuse of the discretion ordinarily exercised.

DISCRETIONARY ACTS. In the absence of proof that the board has abused the authority given it by the law, its orders will not be set aside, although another decision might to many seem preferable.

JURISDICTION. When its order is affirmed, the board is left free to take another action, if thought best.

On the 3d day of October, 1891, the board relocated the schoolhouse site in independent district number seven, Burr Oak township. Appeal was taken to the county superintendent, who reversed the action of the board which ordered the house removed to the new location. From this decision John Knox president of the board appeals.

The proceedings in this case are entirely regular. It is not claimed that there was any direct violation of law, nor that prejudice or improper motives in the least influenced the action of the board. The very common complaint that the discretion vested in the board by the law had been abused was virtually the only error urged.

The only question for us to determine is the single one as to whether the county superintendent was warranted in setting aside the order of the board. Unless the evidence clearly sustains his conclusions we shall be compelled to reverse his decision. But if the evidence shows plainly a gross abuse of discretion on the part of the board, then we must affirm.

Where an abuse of the large discretion vested in the board is urged, to warrant interference by an appellate tribunal such abuse must be proved conclusively. The testimony must disclose so fully the nature of the unwarranted action as to leave no reasonable doubt. The acts of a board must be presumed to be correct, and they are entitled to the benefit of every doubt. Unless it is fully apparent that the discretionary power of the board has been abused to such an extent as to render interference necessary, it is the duty of the county superintendent to allow the act of the board to stand, although he may differ from the board very strongly as to the desirability of the order in question. In this connection, attention is called to appeal decisions found on pages 35, 82, 90, 100 and 135, School Law Decisions of 1888.

In this case while the testimony shows that the removal to the site selected will bring the schoolhouse quite a distance south of the center of the district, it is not in evidence that a suitable site might have been found nearer the center. It must be presumed that the board carefully weighed all the reasons in favor of and against the site chosen, and also that it endeavored to find the best site. The evidence is by no means conclusive that it did not select the best site obtainable. If in the opinion of the people an error has been made, it rests with the electors to choose a board favoring another location.

It is with reluctance that we reverse the decision of the county superintendent. There can be no question that he intended to seek substantial justice for the people of the district. This decision does not prevent the board, if thought desirable to do so, from reconsidering the action by which the new site was chosen and selecting a different site. But we can not find that the evidence supports the county superintendent in overruling the order made by the board and his decision is therefore

REVERSED.

J. B. KNOEPFLER,
Superintendent of Public Instruction.

February 26, 1892.

R. G. W. Forsythe v. Independent District of Kirkville.

Appeal from Wapello County.

Appeal. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

Territory. All territory must be contiguous to the district to which it belongs.

Jurisdiction. In change of boundaries by two boards, an appellate tribunal acquires only the same power possessed by the board from whose action appeal is taken, and may do no more than to affirm the order, or to reverse and do what the board refused to do.

Petition. A petition may be used to bring to the attention of the board the kind of action desired by the petitioners, but a board may act with equal directness without such request.

The board of the above named district refused to concur in the action of the board of the district township of Richland, offering to transfer certain territory to the independent district. Mr. Forsythe, desiring the transfer, appealed to the county superintendent, who reversed the action of the board and ordered the transfer of the territory under consideration by the two boards, with the exception of the northwest quarter of the southwest quarter of section eighteen, which the county superintendent directed should remain a part of the district township of Richland, and also ordered the transfer of the northwest quarter of the northwest quarter of section eighteen, which would otherwise be cut off from the district township to which it belongs. From this decision L. Jones, president of the board of the independent district of Kirkville, appeals.

This case turns on the power of the county superintendent to modify the order appealed from in the manner done by him. It is true that even if the board of the independent district of Kirkville had concurred in the transfer of the territory released by the other board, such order would not have been in conformity with the spirit of the law, because forty acres would then be left belonging to the district township of Richland and not contiguous to the remainder of the district. The county superintendent was led to conclude that the forty acres in question should be transferred, if any change of boundaries was made. But could the county superintendent so determine in this appeal? We think not. The board of the independent district might concur or refuse to concur. They might refuse to concur, and initiate a new proposition which the board of the district township could act upon, when appeal would then lie from the last action. But an attempt to change the order originally made would render it necessary to have such new action considered by the other board, before becoming effective, or even in order that the action could be brought within the power of the county superintendent to consider on appeal. For in a case of this kind no matter can come into the case on appeal, unless the second board, the one last acting, concurs or refuses to concur in the order initiated or proposed by the board first taking action.

It follows then that the county superintendent having only appellate jurisdiction, could not assume original jurisdiction and do what the board from whose action the appeal was taken could not have done. Therefore we are compelled to hold that the county superintendent did not have the power to decide that the northwest quarter of the northwest quarter of section eighteen should be transferred.

A careful investigation of the transcript leads us to believe that perhaps such a change of the boundaries as would transfer the residence of Mr. Forsythe to the independent district, might be desirable. Of course such transfer would include entire forties of land, and no territory could be separated from the district to which it should belong. Whether any change is best, must be determined by the boards interested, the action of the board last acting being subject to correction on appeal. In order that the matter may come again without prejudice

to the attention of the boards, the decision of the county superintendent is reversed and the case remanded to him to be reopened and heard again. We think he will be compelled by necessity to affirm the decision of the board of the independent district of Kirkville, in refusing to concur in the transfer proposed by the district township. This will leave all matters as nearly as possible in the same condition they were before any action was taken. It will then be in order for either board at any time to initiate such a change of boundaries as may seem demanded. There is no absolute necessity for a petition or request. A petition may be used to bring to the attention of the board the kind of action desired by the petitioners, but a board may act with equal directness without such request.

REVERSED AND REMANDED.

J. B. KNOEPFLER,

April 6, 1892. *Superintendent of Public Instruction.*

C. F. SCHEPPELE v. INDEPENDENT DISTRICT OF STONE HILL.

Appeal from Dubuque County.

REHEARING. In refusing a rehearing, or in granting the same, unless the discretion of the county superintendent was unjustly exercised, his decision must be affirmed, on appeal.

NEW TRIAL. To warrant another trial, material reasons must appear, to prove that a second hearing is desirable.

PROCEEDINGS. In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular.

REHEARING. The presumption that the trial was regular and the proceedings full and complete, must be overcome by the reasons urged for the rehearing.

REHEARING. A new trial should be refused unless cogent reasons are produced, causing doubts to arise as to whether the merits of the case were fully and fairly set forth at the former hearing. The reasons urged must present a strong probability that a modification of the decision might be found desirable.

The county superintendent refused to grant a rehearing in this case. The affidavit of appeal from his decision of refusal alleges a large number of errors urged as having been made in thus refusing to allow a new trial. It is obvious that we are to determine only a single question. In refusing a rehearing, did the county superintendent err to such an extent as to warrant a reversal?

The motion for a second trial must be addressed to the judgment and discretion of the officer to whom the motion is presented. In granting or refusing to grant such a request, the county superintendent has original jurisdiction and his conclusions must receive from us the same consideration on appeal which he himself is bound to give to the discretionary acts of the board. If error conclusively appears, a discretionary act may be set aside. But every reasonable doubt inures to the benefit of the party whose acts are questioned.

In order that we may be warranted in reversing the decision of the county superintendent and remanding this case to him for a retrial, we must first be well satisfied that his discretion in refusing the rehearing was unjustly exercised. If he failed properly to appreciate the reasons urged, not giving full consideration to all existing facts within his knowledge, and without due examination arbitrarily refused the rehearing, then the consideration merited by his discretionary act is correspondingly diminished.

Having very carefully reviewed the testimony with reference to the several points of error urged, and closely examined the many authorities and references cited by counsel in the case, and other additional authorities, we are unable to find that the county superintendent erred in refusing the motion for a rehearing. The real merits of the case seem to have been very clearly within full review at the trial of the appeal. Some trivial matters may have been omitted, but in the main, the leading issues were clearly outlined. After due deliberation, the order of the board was affirmed, and decisive reasons given for such conclusion.

Unless the county superintendent could bring himself to believe that another trial was best, he could not in justice to all concerned grant the motion in question. We do not find that the leading reasons urged were well supported. Although these leading reasons may not have been referred to frequently at the time of hearing, they were within the full knowledge of all the parties to the trial. We must presume that the fact of the nearness of the dairy and the boneyard, and the claim that the action of the board was influenced by private interests, were not disregarded by the county superintendent in making up his mind as to his final decision.

It must be assumed that the board would not select a site clearly unfit for use. A location upon swampy ground would be manifestly an unsuitable site. And the choice of a site so near any manufactory as to interfere unduly with the use of the schoolhouse for school purposes would be a palpable abuse of discretion. If any of these conditions actually exist in this case, as now urged in asking us to order a new trial, the aggrieved parties had ample opportunities to bring convincing proof of such facts into their case at the time of its trial, and if they could have found such testimony and failed to do so, they were derelict to their own interests. But the evidence fails to disclose unsuitableness in any of these particulars, or to indicate that the county superintendent failed in any manner to give serious and respectful consideration to every reason for a new trial that was presented to his notice. His action in refusing a rehearing is AFFIRMED.

J. B. KNOEPFLER,

May 23, 1892. *Superintendent of Public Instruction.*

J. A. CLAXTON v. INDEPENDENT DISTRICT OF HOLMES.

Appeal from Fayette County.

SCHOOLHOUSE SITE. The necessities of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future.

SCHOOLHOUSE SITE. The prospective wants of the district may properly have weight in determining the selection of a site, when such selection becomes necessary, but not in securing the removal of a schoolhouse now conveniently located.

On the 21st of March last, the board, by two affirmative votes to one negative, relocated the schoolhouse site at a point eighty rods west of the present site. From this action J. A. Claxton appealed. The county superintendent reversed. D. S. Thompson now appeals to this department.

The proceedings in this case appear to be entirely regular. There was no violation of law. Appellant does not allege malice or prejudice. Therefore abuse of discretion was the only point to be considered by the county superintendent. He decided, after a full hearing of the case, that there had been abuse of discretion sufficient to warrant him in reversing the board's order. It is for us to review the testimony on which he made this decision, and the argument offered in the appeal before this tribunal.

In cases such as the present, the question for an appellate tribunal to determine is not which of two sites is the better, but whether the site selected is under existing and prospective conditions of the district, at all fit and suitable for a schoolhouse site, as well as fair to the patrons. And to determine this, various factors must be taken into consideration. There should be unusually strong reasons for abandoning a site provided with a good well, especially if the new site is on lower ground as in the present case, where good water may not be procurable. Trivial differences in distance should not usually be allowed to lose to a district the value of shade trees already well advanced. Wells and trees cannot be moved, and with the latter, it not only makes expense, but requires years to replace them. However, in all this, and in the doubt that is raised whether the new site is a fit one at all on account of being low and wet, we are disposed to give the board the benefit of the doubt.

Counsel for appellant states that the little village of Donnan, in the northwestern part of the district, is certain to grow considerably in the near future because of being at the junction of two railroads, and that therefore it should have better school facilities than are afforded by the old site. Taking the premises in this reasoning as correct the conclusion is sound, only that it does not go far enough Donnan village would demand better school facilities than even the new site would afford. It would ask to be set off in an independent district and have its own local school, taking with it more or less of territory off the west side of the Holmes district. This would leave the schoolhouse on the new site considerably too far west of the geographical center and center of population of the district as it would then be left, especially so since many of the residents in the eastern half live in the extreme eastern limits of the district.

Therefore, taking all these things into consideration, while fully realizing how reluctant this department has always been to interfere with the discretionary acts of a board, we think it will be better for the schoolhouse to remain on the old site for the present When a north and south highway shall have been actually constructed and its location thus made certain, and when the necessities of the northwestern portion of the district shall be more definitely understood, it will be easier to determine the needs of the district, and choose a site that shall be permanent, if removed from the present site. The board may then, if it sees fit, take action again on the question of relocation. The decision of the county superintendent is hereby AFFIRMED.

J. B. KNOEPFLER,
Superintendent of Public Instruction.

November 23, 1892.

OLE THOMPSON *et al.* v. DISTRICT TOWNSHIP OF BELMOND.

Appeal from Wright County.

TESTIMONY. Opinions unsupported by facts do not become satisfactory evidence.

DISCRETIONARY ACTS. The order complained of is reviewed not to discover the desirability of the action, but to determine whether sound reason and wise discretion were followed.

DISCRETIONARY ACTS The fact that some other action would have been desirable or preferable does not establish that the board abused its discretion.

BOARD OF DIRECTORS. Its action is presumed to be correct and for the interest of the district, until proved to be otherwise

DISCRETIONARY ACTS. In the determination of appeals, the weight which properly attaches to the discretionary actions of a tribunal vested with original jurisdiction should not be overlooked.

This case comes before the superintendent of public instruction on appeal taken by John L. McAlpine from the decision of the county superintendent reversing the action of the board in refusing to create certain additional subdistricts as prayed for in a petition.

The point at issue is a simple one, being merely a question of discretion on the part of the board as to whether it was best to take or not to take a certain action. The decision of the county superintendent compels the board to do what it did not deem wise or necessary. Doubtless there are instances when such a ruling on the part of an appellate tribunal is needed. But does the evidence warrant such a decision in the present case? The affidavit bringing the case before the county superintendent does not allege violation of law, or prejudice. Neither does such appear in the testimony, The law gives boards very wide latitude in the exercise of their discretionary powers. Not infrequently cases arise in which an appellate tribunal would sustain their discretionary action whether they granted or refused to grant a given petition, there being no manifest abuse of such discretion in either action In any event, the action of a board is presumed to be correct and for the interest of the district until proved to be otherwise. Mere opinions of witnesses

that a different action would have been preferable cannot be accepted as evidence. Statements of facts and existing conditions must be given. Even then the fact that some other action would have been desirable or preferable does not establish that the board abused its discretion. It must be shown that the action complained of is an injury to the district or does gross and needless injustice to the patrons thereof. The decisions in this line by our predecessors are numerous and pointed, and we fully concur in the position taken.

In the present case the evidence does not show that any one is made to suffer injustice by the board's action. Ample provision has been made to accommodate all of the pupils of the territory in question with school privileges. It is not in evidence that the formation of three subdistricts out of the one would improve these facilities, since the subdistrict now has three schoolhouses located for the convenience of the respective portions of said subdistrict.

For the county superintendent, or the state superintendent, to render a decision invariably as he would have voted had he been a member of the board, is not what the law intends when clothing these officers with authority to try and decide appeals. Malice, prejudice, violation of law, is the board guilty of any of these? Or has it gone beyond sound reason and wise discretion in taking or refusing to take a given action? These are the questions for both tribunals to inquire into.

While we believe the county superintendent endeavored conscientiously to hear and decide the present case fairly, yet in the light of the foregoing reasoning we do not find that the evidence discloses grounds sufficient for refusing to affirm the board, and the decision of the superintendent is therefore REVERSED.

J. B. KNOEPFLER,

March 11, 1893. *Superintendent of Public Instruction.*

J. O. SEVEREID AND JOHN STENBERG V. IND. DISTRICT OF FIELDBERG.

Appeal from Story County.

SCHOOL PRIVILEGES. Are not guaranteed children elsewhere than in the district of their residence.

SCHOOL PRIVILEGES. To the fullest extent possible, the board should equalize the distance to be traveled to school.

SCHOOL PRIVILEGES. Attendance in another district depends upon the board of that district, and must therefore be regarded as a contingency.

The transcript in this case shows that on March 20, 1893, the board in answer to a petition relocated the school site and made an order to move the schoolhouse on the site selected, the latter being more than three-fourths of a mile north of the present site. John O. Severeid and John Stenberg appealed to the county superintendent who affirmed the order of the board. The same parties now appeal to the superintendent of public instruction. The essence of affidavit filed by appellants is abuse of discretion by the board because several families will be compelled to go two miles or more to reach the schoolhouse on the new site.

The district consists of four sections in the southwest corner of Palestine township. The schoolhouse as now located is in the geographical center of the district and within a distance of one and three-fourths miles from the most remote patrons. In the northern part of the district, in fact on the extreme northern boundary, lies the village of Huxley. It is in the edge of this village, and therefore almost in the limits of the district that the new site has been selected. Two of the directors residing in said village and being the two who voted for the new location. The district has a school enumeration of sixty-eight, of whom about forty live in Huxley These pupils have been going to the center of the district, where the schoolhouse now is, a fraction over one and one-fourth miles. For the better accommodation of these pupils the removal was ordered. While some attempt is made to show that the site chosen is unfit, that the

cost of moving will be excessive, and that there was undue prejudice, we do not find that any of these charges are sustained We may therefore consider merely the element of distance to the new site. It is in evidence that some of the school patrons will have two and one-fourth miles to reach the new site, while there are five families with nine children whose distance will be over two miles, also that about twenty-nine children at present will be unfavorably affected and about thirty-seven favorably. While the new site will accommodate a majority of the pupils, still it is considerably north of the center of population. The board and the petitioners seemed to realize clearly that the contemplated site would leave several families at a great disadvantage as to school privileges, since they state that these families can be accommodated in other districts. They realized that an injustice would be done if these families should be compelled to travel to the new site for school conveniences. But there is nothing offered in evidence to show how said patrons can be accommodated elsewhere. It is not shown that they will be as near even another school as to their own, provided they might attend such a school. For aught that appears in the evidence, they may be three or more miles from any other school. Even if there be one nearer, there is no positive evidence that the board has made arrangements for the schooling of said pupils in another school, or even that it can make such arrangements. Witnesses say that they think said pupils could attend in some other district, but this belief merely cannot be received as satisfactory evidence on this point. What are the probabilities that such provisions can be made for the children of the five families under consideration? The territory on which these families reside cannot be set off to another district for the reason that territory cannot be detached to districts in a different township as would be necessary in this case. Neither is it legal to reduce independent districts to less than four sections except in special cases. See chapter 133, laws of 1878, as amended by chapter 131, laws of 1880, page 84, S. L. 1892.

The board is not sure of securing school privileges for said pupils elsewhere without such transfer of territory, because it will require the concurrence of another board which may absolutely refuse. In any event the board of Fieldberg independent district is not able to guarantee school privileges to these families elsewhere than in their own district, since the matter does not rest wholly in its own power. While the law does not as many suppose, prescribe a maximum distance for school travel, yet by permitting provisions to be made under given conditions for children to attend other schools than their own when they live more than one and one-half miles from the latter, it is evident that the legislature regarded this distance about as far as a child should travel to reach school.

It is the duty of the board to furnish reasonable facilities in its own district for all the children thereof Even a minority of only five families has rights and claims which may not be ignored. To give a majority of the district located in a village convenient school privileges by practically cutting off others entirely from any privileges of education, we believe after long and careful study to be an abuse of discretion sufficient to warrant reversing a board taking such action. The distance these families will be compelled to travel to school will be such as largely to deprive them of their just rights in the matter of enjoying school accommodations.

We are aware that this department has ever stood for sustaining the discretionary acts of a board. In this case, however, we believe that abuse of discretion has been fairly proven by the appellants. Doubtless the board had not fully considered the fact that rights of appellants could not be so ignored in the effort to improve the school conveniences of other parts of the district, or did not consider that providing school privileges for appellants in some other district is hedged about with such complications and uncertainties. The case is different from what it would be had theirs been a district township instead of an independent

district. In the former case the matter would be much more in its own hands It could rearrange boundaries to accommodate those at too great a distance from the new site, a matter which the board in the present case cannot do. If it was satisfactorily established that said families had been or could and would be permanently provided with better school facilities elsewhere such accommodations being annually dependent upon conditions in the district in which they might desire to attend, especially in the disposition of each new board, it would have been a comparatively clear case for affirming the action of both board and county superintendent. Because the distance of five families is to our mind needlessly increased and their school privileges nearly cut off and because there is no proof that another school is nearer with provision that they could attend such school, if there is one, and it seeming quite doubtful whether such provisions can be made at all, we feel that the interests of said families should be protected. We have no reason to question the intentions of any parties connected herewith. We simply state that in our opinion the board did not consider the difficulties in the matter of providing school facilities for the five most distant families.

The decision of the superintendent is REVERSED.

J. B. KNOEPFLER,

August 14, 1893. *Superintendent of Public Instruction.*

BRADFORD INGRAHAM v. DISTRICT TOWNSHIP OF HARTFORD.

Appeal from Iowa County.

SCHOOLHOUSE SITE. It is not the province of an appeal to determine which of two sites is the better.

TESTIMONY. If selfish or other improper motives are complained of, the testimony must show such facts conclusively.

The history of this case is brief. March 20, 1893, the new township board having then just organized, on motion appointed a committee of three to relocate the site of schoolhouse in subdistrict number eight, said site to be near the geographical center of said subdistrict. On the 20th of May, at a special called meeting, it was moved to reconsider the motion to relocate the schoolhouse in subdistrict number eight, which motion was carried. By another motion the committee appointed at the former meeting was discharged. It is from this action of the board on May 20 that Bradford Ingraham appealed to the county superintendent, and from the latter's decision affirming the action of the board, to the superintendent of public instruction.

In his affidavit, Mr. Ingraham alleges that the board was influenced by selfish motives and further alleges in effect that the board abused its discretionary powers. The abuse of discretion, if such it is, consisted in the unequal distance of travel from the different parts of the subdistrict to the schoolhouse. A careful reading of the case as filed in the transcript, fails to disclose any selfish or improper motives on the part of the board, and we dismiss this charge without further comment.

Counsel for appellant discusses at some length the effect of a vote to reconsider, and then not reconsidering, not voting on the former motion. It is claimed that the board merely voted to reconsider former motion to relocate, and that no further action being then taken, the motion to relocate remained before the board until it should be acted upon one way or the other, or that not being taken up within a month, it was terminated, leaving the previous action thereon in force. Counsel for appellees claims if the first be true, then the case should have been dismissed, as no action had been taken from which to appeal.

Technically the vote to reconsider the former motion placed said motion before the board again, as if it had not been voted on, and left it ready for debate and adoption or rejection. But it is clear that the board intended to rescind its

former action and evidently understood the word reconsider in the sense of rescinding. It is quite a common misapplication of the word. That this was the intention is the more conclusive, when we note the subsequent vote of the board in discharging its committee.

In providing for appeals before the county and state superintendent, it was the manifest purpose of the lawmakers to afford a speedy, inexpensive remedy, stripped of undue technicalities, for certain classes of grievance. Holding this view, we must recognize the intent of the board, rather than what it did under a technical construction of language. Apparently the board itself made the relocation and appointed a committee chiefly to arrange the details and see to the removal of the schoolhouse. At the May meeting no action was taken by the board on the report or statement made by the committee. The resolution of the board at the March meeting located the site about eighty rods east of the old site. The rescinding of this amounted to a new location or to undoing the former action, a thing they clearly had a right to do. Members of the board had changed their views.

No evidence is introduced to show that either site is in itself unsuitable. It is merely a question of distance. It is a question of moving the schoolhouse away from some and nearer to others. Neither site would seriously discommode any one according to the plat sent up with the transcript. It is in evidence that only one more pupil would be better accommodated at the new site than at the old. It is not the province of this department, nor of the county superintendent, to determine which of two sites is the better. An appellate tribunal in such cases may determine only whether the board has chosen a grossly unsuitable or unjust and unfair site. If so the board should be reversed. If not, it should be sustained, even though a better site could be found.

In the present instance, no gross injustice is done, no manifest error committed In fact both sites are good, and we should be compelled to sustain the board on appeal in the selection of either the present or the new site. We hold that the county superintendent committed no error in affirming the action of the board when it practically rescinded its former motion for relocation and chose to keep the old site. His decision is therefore AFFIRMED.

J. B. KNOEPFLER,
Superintendent of Public Instruction.

December 21, 1893.

W. S. KENWORTHY *et al.* v. INDEPENDENT DISTRICT OF OSKALOOSA.

Appeal from Mahaska County.

DISCRETIONARY ACTS. The order of a board should be reversed only upon the plain showing that the law has been violated or discretion grossly abused.
BOARD OF DIRECTORS. Has full power to provide and enforce a course of study.
RULES AND REGULATIONS. The burden of proof is with the appellant to show that a rule is unreasonable.

The history of the case is this. The board has a regulation that all pupils shall provide themselves with text-books suitable to their grade, and that failing to do this they shall be suspended until they comply with the rule.

The children of the appellants were under this rule suspended from school for not being provided with the music books in use in said schools. The parents appealed from the ruling of the board to the county superintendent who reversed the action of the board, and the board appeals.

It is an established rule that the action of a school board should be reversed only upon the showing that it has abused its discretion or violated the law. In this case the county superintendent avers that it violated the law in that it did not advertise for bids as required by section 5 of chapter 24, Laws of 1890, before the music books were adopted.

There is nothing in the transcript to show that it was acting under the provisions of this chapter, which it could not do unless so instructed by the electors of the district. See section 12 of said chapter. So much of the county superintendent's decision as refers to this may then be dismissed from the case.

It is further claimed that it abused its discretion by adopting an unreasonable rule. This is the real question at issue.

With their power to establish and maintain graded schools, all boards are invested with the authority to prescribe a course of study in the different branches to be taught. It is not our province to determine what the courts might hold in this case. They have held that in case a pupil refuses to conform to a course of study as prescribed by the board, the proper remedy is suspension and not corporal punishment. See 50 Iowa, 145. They have also held that a rule suspending a pupil for a certain number of absences or tardinesses is reasonable, and may be enforced. See 31 Iowa, 562. It is true that they also have held that a pupil may be suspended only for gross immorality or persistent violation of reasonable rules. See 56 Iowa, 476.

In this case it is nowhere shown that the children would in any way be injured by the study of music, or that their health or wellbeing demanded that they should be excused from the study in question.

There is fair ground for considering the refusal to purchase the books as a failure to comply with a reasonable regulation of the board. The rule of the board was made so as to bear with equal force upon all the pupils in the school. And in order to make it as little oppressive as possible it offered the books at the least expense possible, and that none might be deprived of the benefits of the study the board authorized the teachers to loan the text-book in music without charge to children whose parents were in indigent circumstances.

The law has invested boards with very large discretionary powers, under which they may grade the schools and establish such regulations as may seem to them best for the interest of the entire school. The burden of proof in this case was with the appellants to show that the rule is unreasonable, or that in obeying it their children would suffer some hardship. This we think they have failed to do, and the decision of the county superintendent is therefore REVERSED.

HENRY SABIN,

February 12, 1894. *Superintendent of Public Instruction.*

J. HIMELICK *et al.* v. DISTRICT TOWNSHIP OF PLEASANT.

Appeal from Monroe County.

COUNTY SUPERINTENDENT. To warrant setting aside the order of a board, its error must appear plainly.

COUNTY SUPERINTENDENT. Examines critically the testimony, to determine whether any good reason is found requiring a reversal of the order of the board.

On appeal, the county superintendent affirmed the order of the board by which several changes were made in subdistrict boundaries, with a view to a better and more economical subdivision of the district township. It is urged by the appellant that the county superintendent erred in sustaining the action of the board, for the reasons, among others, that the board should first have provided a highway to any proposed new schoolhouse site, also in holding that patrons are not injuriously affected to the extent that the order of the board should therefore be set aside; and also that his decision supporting the board is against the weight of evidence, and prejudicial to the best interests of the entire district township.

A close comparison of the very clear and full statements made in the county superintendent's decision with the testimony in the case, does not disclose any good reason for reversing his decision. It is evident that a site cannot be

relocated to accommodate the subdistrict newly formed, until such subdistrict is created and in effect. An appeal will lie to correct a legal error made by the board in fixing any site.

The testimony is conclusive that the changes made by the board will be to the advantage of many patrons. It often occurs that such necessary changes will discommode some, who previously may have been favored. It is in evidence that the board considered very fully the claims of all parties, and that the action finally taken seemed demanded by the good to come to the larger number

We think the county superintendent rightly held that the weight of evidence supported the order made by the board. In hearing the appeal, he very properly reviewed the action taken by the board, in the capacity of an appellate tribunal, not as viewing matters in the way he might have done if he had been a member of the board, and thus possessing original jurisdiction, but he simply examined critically the testimony in the case, to determine whether any good reason could be found which would require that the order of the board should be reversed To warrant a county superintendent in setting aside the order of the board, its error must appear plainly.

In this case, the matter hinges upon the determination of the single question, —Did it abuse its discretion? After a fair hearing, the county superintendent held that it had not done so, and as before stated, we can find no good reason to differ from his conclusion. AFFIRMED.

HENRY SABIN,

April 26, 1894. *Superintendent of Public Instruction.*

ELLA BENSON AND BELLE ROBERTSON v. DIST. TWP. OF SILVER LAKE.

Appeal from Dickinson County.

CONTRACT. It is the province of the courts of law to decide as to the validity of a contract.

COUNTY SUPERINTENDENT. Does not have the power to interpret the legal value of a contract.

This case turns upon the construction to be given to a contract. The validity of the contracts in the sense claimed by the appellants is questioned and denied by the board The teachers assert that said contracts are of full force for the nine school months named in the contracts, and the board contends that no authority was granted by it to any one to contract for more than six months, and that therefore the contracts can have no force beyond the term of six months. It is the province of the courts of law to decide as to the validity of a contract In the trial of an appeal as soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed. As the real matter to be decided in this case is what the contracts actually are and what force must be given to their essential conditions, it follows that the county superintendent did not err in dismissing the appeal for want of jurisdiction.

This case is not parallel with *Kirkpatrick v The Independent District, etc.*, 53 Iowa, 585, in which it is held that the remedy of a teacher wrongfully discharged is appeal, and not an action at once in the courts to recover compensation. In the present case the board did make an order discharging these two teachers, but it is clearly apparent that the county superintendent could not review that order of the board without proceeding upon the assumption that the contracts had force and validity, and he did not have the power to interpret the legal value of a contract. We are compelled to find that the only remedy of the appellants is an action in a court of law. The decision of the county superintendent is affirmed and the case DISMISSED.

HENRY SABIN,

August 11, 1894. *Superintendent of Public Instruction.*

SAMUEL FALLON v. INDEPENDENT DISTRICT OF FORT DODGE.

Appeal from Webster County.

ATTENDANCE. An actual resident may not be denied equal school advantages with other residents.

BOARD OF DIRECTORS. May adopt its own course to decide the question of actual residence.

TUITION. Failing to substantiate a claim to residence, a non-resident may attend school only upon such terms as the board deems just and equitable.

In this case the two sons of the appellant, aged nineteen and sixteen years, were refused admission to the schools unless they would pay tuition. They claimed to be residents of the district and that they were entitled to the same privileges as other residents. Being denied admission they appealed to the county superintendent, who affirmed the order of the board.

The entire case turns upon the fact of the residence of the children. If a board concludes that a child is an actual resident, it cannot deny him equal school advantages with other residents. But if it cannot be satisfied that an applicant is an actual resident, then it is its duty to make the same requirements that are demanded of other scholars who may be sojourning temporarily in the district.

It will be of interest to inquire as to who may decide definitely the question of residence, and as to the manner in which the matter should be considered. In view of the fact that the matter has given a great deal of trouble in a number of districts, this department has had occasion frequently to submit questions involving some phases of the subject to the attorney-general, for his official opinion. In one of these opinions he uses the following language, which we think is quite applicable in this present case:

"It may be said that it is nowhere provided in the law what course the board of directors shall pursue in determining whether a pupil is a resident of the district, nor is the board directed as to the kind of evidence that shall be produced, nor as to the manner of producing it in determining such question. In the absence of such a provision directing the board as to its course of proceeding in such cases, I think that body may adopt any course it sees fit and take any kind of evidence it chooses in deciding this question of residence. I think it may make such decision from its own knowledge of facts; from the observations of the members; from the statements, sworn or unsworn, of parties who have knowledge of the facts, or from any other fair and impartial method of obtaining information bearing upon the point at issue. I do not think the board has power to compel the attendance of witnesses, or to administer oaths to them; but in gathering its information and in deciding the question, it must act in entire good faith and with a view to getting the exact truth and making its decision according to the very right of the matter."

It is in evidence that the board in this case acted with deliberation, and it is not claimed that it failed to receive any testimony or statements that would tend to make a final determination of the matter by it any more clear or conclusive. In reviewing its decision on appeal the county superintendent was unable to find that it had abused its discretion, had acted without the fullest information within its reach, or had arrived at any other than an equitable conclusion.

This department has continuously held, in interpreting section 1794, that the board is to be satisfied that the residence of the scholar is actual. The burden of proof rests upon the child who has recently come into the district, to establish the fact of residence, before he can be admitted to school privileges free of tuition. Failing to convince the board and to substantiate his claim of residence, he can attend only upon such terms as the board may deem just and equitable.

In this case we do not find that the county superintendent erred in affirming the order of the board requiring the children of Mr. Fallon to pay tuition as an essential condition to attendance. His decision is therefore AFFIRMED

HENRY SABIN,

September 1, 1894. *Superintendent of Public Instruction.*

G. O. Rogness v. District Township of Glenwood.

Appeal from Winneshiek County.

APPEAL. Will lie from an action of the board which is made a matter of record.
APPEAL. May be taken from the action of the board in laying the subject-matter of a petition on the table.

It appears that at the meeting of the board, held September 17, 1894, Geo. O. Rogness presented a petition asking that the board redistrict said township, and also that an extra school be kept for four months in a certain school building, situated on the farm of E. Bolson. By vote of the board said petition was laid on the table. An appeal was taken to the county superintendent, who dismissed the same on the ground that no action was taken by the board which could furnish the basis of an appeal. The case comes now on appeal before the superintendent of public instruction.

The only point to be decided is whether an appeal may be taken from a vote to lay on the table. The words of the law in section 1829 are that any person aggrieved by any order or decision of the board may appeal. The transcript sent up by the secretary in this case reads: "Moved and carried that the bill (petition) of G. Rogness be laid on the table." It must be held that this constitutes an action on the part of the board. The motion to lay on the table was made, was voted upon, was declared carried, and is so recorded upon the secretary's book. The above conclusion is in accord with the unvarying opinion of this department for a long number of years.

It is to be noted that in the case cited by counsel for the side of the district, in 71 Iowa, page 634, the supreme court does not attempt to decide what constitutes an action. It refers to cases in which the board purposely intend by neglect or refusal, to avoid taking an action or making an order or decision. In the case we are now deciding, the board made an order, which the secretary recorded in the minutes, "that the petition be laid upon the table." The decision of Superintendent Abernethy, see S. L. Dec. 1892, page 62, that the motion to lay on the table "furnishes a convenient method of disposing of the matter," appears to be to the point. The right of the board to make such a disposition of a case cannot be questioned, but it must be regarded as an action subject, like any other action, to appeal.

After studying up carefully the precedents as established by the rulings of this department, and reading with equal care the cases cited by counsel, we can arrive at no other conclusion. The case is reversed, with the suggestion to the superintendent that he remand the case, in order that the board may take such further action as may seem fair and just to all concerned. REVERSED.

HENRY SABIN,
Superintendent of Public Instruction.

January 11, 1895.

Mary Grey v. Independent District of Boyle.

Appeal from Iowa County.

BOARD OF DIRECTORS. In locating a site the board acts wisely in taking into consideration the prevailing sentiment of the people.
COUNTY SUPERINTENDENT. Should reverse the action of the board only upon the clearest and most explicit proof of abuse of discretion.

The history of this case is not different from that of many others. The schoolhouse of the district is unfit for use, and the electors voted bonds to build a new one. By a vote very nearly unanimous they directed the board to locate the new house on a site 160 rods east of the present site. While we do not hold that this vote was binding upon the board, it showed at least the prevailing sentiment of

the district, and the board acted wisely in taking it into consideration, in selecting a new location. See also case on page 75, S. L. Dec. 1892.

As it was not able to purchase a site desired by the electors, the board chose one 30 rods farther west. From this action Mrs. Mary Grey appealed. The county superintendent reversed the order of the board and appeal is taken to the superintendent of public instruction. The transcript as sent up with the case reveals no new point of law to be considered. The proceedings of the board were regular and in accordance with the law. The evidence nowhere shows any passion, prejudice, or malice, on the part of the board. The responsibility of selecting the site rests with the board, that body having original jurisdiction. See also case on page 138, S. L. Dec. 1892. The county superintendent having only appellate jurisdiction should reverse its action only upon the clearest and most explicit proof of abuse of discretion. Reference is here made to the case of *Edwards v. Dist. Twp. of West Point*, page 22, S. L. Dec. 1892, as presenting a very conclusive discussion of the principles involved.

While we always regret to be compelled to disturb the decision of a county superintendent, and concede that in this particular case the county superintendent was actuated only by the best motives, we cannot find any such satisfactory proof that the board erred, as would warrant the county superintendent in reversing its action. The decision of the county superintendent is REVERSED.

HENRY SABIN,

August 26, 1895. *Superintendent of Public Instruction.*

MARY GREY v. INDEPENDENT DISTRICT OF BOYLE.

Appeal from Iowa County.

APPLICATION FOR A REHEARING.

REHEARING. To obtain a rehearing the necessity must be clearly shown.

TESTIMONY. New testimony can be introduced only when the facts materially affecting the case could not have been known before the trial.

Comes now the attorney for Mary Grey, and asks a rehearing in this case.

It is a reasonable presumption that the merits of the case were fully presented at the time of the trial before the county superintendent. The party asking for a rehearing does not claim that any testimony has been discovered which could not have been introduced at the time of the original trial. The course which he urges would in effect be to initiate a new case, and introduce testimony concerning a site which neither the board of directors nor the county superintendent had in mind, as disclosed by the transcript sent up to this office.

By using reasonable diligence, the facts set forth in the affidavit asking for a rehearing, might have been produced before the county superintendent, but it may not properly be claimed that a rehearing for such a purpose should now be granted. See second paragraph on page 109, case in S. L. Dec. 1892. If the case were reopened, it could be only to ascertain whether the merits of the case were fully and fairly set forth at the former hearing, as determined by the transcript of the case, certified to by the county superintendent as a record of the proceedings before him. No new testimony as to the desirableness of any other site could be admitted. The time for the introduction of such testimony was at the first trial, and we do not see that there is anything to be gained by reopening the case. It would be to consider only the same points which we endeavored to consider fairly and fully in our decision of August 26, 1895. The motion for a rehearing is denied.

HENRY SABIN,

September 4, 1895. *Superintendent of Public Instruction.*

MARY GREGORY v. W. A. MCCORD, CO. SUPT.

Appeal from Polk County.

COUNTY SUPERINTENDENT. Unless a marked abuse of discretionary power is clearly and conclusively proved, his action in refusing or revoking a certificate will not be interfered with on appeal.

Section 1767 provides that if the county superintendent is satisfied that an applicant possesses the requisite knowledge of the branches specified in section 1766, and a good moral character, together with the essential qualifications for governing and instructing children and youth, then said county superintendent shall grant a certificate to teach in the schools of his county, for a time not to exceed one year. If he is not satisfied that the candidate is adequately qualified in every one of these particulars, then the certificate may be denied.

Section 1771 provides that the county superintendent may revoke a certificate for any reason which would have justified the withholding thereof when the same was given, provided that there shall be an investigation, of which the teacher shall have personal knowledge and be permitted to be present and make defense.

It must be left entirely to the judgment of the county superintendent to determine what are the essential qualifications for governing and instructing children and youth. No court will attempt to control his discretion in this matter. He may conclude that the teacher fails through laziness, moroseness of temper, want of self-control, or by reason of some marked physical defect con cealed at the time of examination, or any one of many other points, without in the least impeaching the moral character of the teacher, or his technical knowledge of the branches to be taught.

We are compelled to hold that the county superintendent had full and complete jurisdiction of the case at bar.

The law provides that the teacher shall have the fullest opportunity to make his defense. The county superintendent was occupied nine days in trying this case. There can be no doubt that this provision of the law was complied with in every particular.

The only other point to be determined concerns the abuse of discretion on the part of the county superintendent. A careful review of all the papers sent up in the transcript fails to show any passion, prejudice or malice on his part. We find that the proceedings were regular and in accordance with the law.

The counsel for Mary Gregory submits a large number of errors on the part of the county superintendent, but we cannot find that any one of them is vital to the case. The rulings made by the county superintendent have no material effect on the final decision of the case, and the exceptions of the plaintiff are passed over. Special reference is made to the case of *Dougherty v. Tracy*, page 17, S. L. Dec. 1892, in which this whole subject is thoroughly and fully discussed by one of the ablest men who ever occupied this office.

The same discretion which the county superintendent has in issuing a certificate, he possesses in revoking it. The supreme court has held that it cannot control such discretion, or substitute its own judgment for that of the officer. See 52 Iowa, 111. It is not for us to say that Mary Gregory is or is not a fit person to teach in the schools of Polk county. The law vests that right in the discretionary power of the county superintendent, and he must assume the responsibility. Unless a marked abuse of his discretionary power is clearly and conclusively proved, his action in refusing or revoking a certificate will not be interfered with on appeal. See *Walker v. Crawford*, page 115, S L. Dec. 1892

After a careful consideration of all the points involved, we find no reason to warrant reversing the action of the superintendent. AFFIRMED.

HENRY SABIN,

September 26, 1895. *Superintendent of Public Instruction.*

E. E. Amsden v. Independent District of Macedonia

Appeal from Pottawattamie County.

Affidavit. The affidavit may be amended when such action is not prejudicial to the rights of any one interested.

Affidavit. Must be accepted, if sufficient to give the appellant a standing.

Appeal. Mere technical objections should not prevent the fullest presentation of the merits of the case, in the trial of an appeal.

Testimony. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

There are certain facts in this case concerning which there is no disagreement. The board of directors contracted on the 26th day of March, 1895, with E. E. Amsden, to teach upon terms clearly set forth in the contract as signed by both parties. Concerning the validity of this contract there is no doubt expressed.

Upon the 5th day of July the said Amsden had a hearing before the board, upon definite and well specified charges. He was duly notified of these charges, was present both himself and by counsel at the time of trial, and was allowed to make his defense. The board took time for deliberation, and finally on the 8th day of July, made an order annulling the contract, and in effect discharging the teacher. From this decision Mr. Amsden appealed to the county superintendent, who on the 3d of September, rendered a decision dismissing the case on account of the legal insufficiency of the affidavit.

There are only two questions involved. Was the original affidavit sufficient to enable the county superintendent to assume jurisdiction of the case? And could the affidavit be amended at the time of trial?

It must be held that the lapse of thirty days from the making of the order sought to be appealed from does not affect in any way the right of the appellant to amend his original affidavit. If he offered his amendment at the time of trial, he complied with the usual practice. Whether the amendment should be admitted depends upon its nature. If it set up a new and distinct issue, one not involved in any way in the original affidavit, then the county superintendent should refuse to allow the amendment to be made. See case on page 141 in S. L. Dec. 1884. An amendment is, however, admissible when it tends to correct mistakes or to make clearer or more explicit the charges contained in the original affidavit. See case on page 25, S. L. Dec. 1892. In the case at bar the amended affidavit introduces no new issue and does not in any way prejudice the rights of any person. We think the county superintendent committed error in refusing to admit the amendment.

Now as to the original affidavit. We do not understand what is meant by the term *legal insufficiency*. It is to be remembered that no very definite rules have been or can be adopted for the trial of cases before the county superintendent. This department has always held that the system of appeals was intended as a speedy and inexpensive method of adjusting school difficulties. See case on page 25, S. L. Dec. 1892. The supreme court has held that it "is abundantly manifest that the legislature designed to afford an inexpensive and summary way of disposing of these cases." See 68 Iowa, 161 Mere technicalities cannot be allowed to intervene to defeat the ends for which the system of appeals was instituted.

The appellant sets forth in his affidavit that the board acted through passion and prejudice, and that he did not have the fair and impartial trial guaranteed to him by section 1734. On these as well as on other grievances set forth in the affidavit, the appellant has the right to be heard before the county superintendent, to introduce testimony, and to be heard by himself or his counsel

The law makes it obligatory upon the county superintendent to hear such a case, to weigh carefully and without prejudice the evidence and the arguments,

and to render his decision in accordance with his judgment. This is the more important in such cases, because the teacher has no other remedy in law of which he can avail himself. Through some informality which does not in any way affect the issues in the case, he should not be deprived of his right of appeal.

We say nothing of the merits of this case. We know nothing of them. We believe the affidavit of appeal was sufficient to give the appellant a standing before the county superintendent, and that is the only point upon which we are called to pass.

The case is remanded to the county superintendent, with directions to fix a time of hearing the same within fifteen days from the date of this decision, and to notify all concerned, that they may be present. REVERSED AND REMANDED.

HENRY SABIN,

November 21, 1895. *Superintendent of Public Instruction.*

D. C. McKEE v. DISTRICT TOWNSHIP OF GROVE.

Appeal from Humboldt County.

SUBDISTRICT BOUNDARIES. When an action has been reversed by the county superintendent, and that decision affirmed by the superintendent of public instruction, the board cannot act again until a material change has taken place.
SCHOOLHOUSE SITE. When purchased need not necessarily be upon a highway
DISCRETIONARY ACTS. An appellate tribunal is not to decide mainly whether the action complained of was wise, or the best that might have been taken, but simply whether a reversal is required by the evidence

In this case the board on September 16, 1895, made two orders. By the first of these it divided subdistrict number 7 in said township into two subdistricts, to be known as number 7 and number 9, and established the boundary line between them. By the second action it ordered the removal of the schoolhouse, now located on section 34, township 92 north, range 28 west, removed and located on section 33, township 92 north, range 28 west, on the Sherman and Dakota road, and authorized the president to draw an order for the payment of the same on report of the committee.

From these two actions, D. C. McKee appealed to the county superintendent, who reversed both actions of the board and relocated the schoolhouse on the old site. From the order removing the schoolhouse D. C. McKee takes an appeal to the superintendent of public instruction. The former action of the board dividing the subdistrict and reversed by the county superintendent is not in the case. This simplifies the matter and leaves as the only point to be considered, the discretionary act of the board in ordering the removal of the building to the new site.

The district as at present constituted is four and one-half miles from east to west in extreme length. The two schoolhouses stand within a mile of each other.

There are several points brought in by the county superintendent and in the arguments of the attorneys which need but a brief notice. It appears that at a previous meeting of the board it took action removing the schoolhouse to a site near the present new site, which action was reversed by the county superintendent, and that there has been no material change in the district since that. This does not act as a bar in any sense to the present proceedings For a full discussion of this point see *P. O'Connor Jr., v. District Township of Badger*, page 108, S. L. Dec 1892.

The only case in which the board cannot act again without a material change is when a former action has been reversed by the county superintendent, and on appeal to the superintendent of public instruction, has been affirmed. In the case at bar the county superintendent reversed the action of the board but appeal was not taken to the superintendent of public instruction.

Much stress has been laid also upon the question whether the road upon which the new site is located is a highway in the sense intended by the law. Section 1826 has reference to a case in which the board condemns a piece of land for

schoolhouse purposes. But when said site is purchased by the board the provisions of sections 1825-1826 do not apply. See also for a full discussion of this point, case *H. D. Fisher v. District Township of Tipton* page 86, S. L. Dec. 1892.

If the site selected and purchased should be inaccessible, it might be a case warranting the reversing of the board, but in the case at bar the site purchased by the board is on a highway, which both parties acknowledge has been traveled more or less for at least nine years.

This leaves the only point for consideration whether the board abused its discretion in ordering the removal of the schoolhouse. The location of the schoolhouse is a matter entirely within the discretionary power of the board. Its action ought not to be reversed by the county superintendent without the clearest proof that it has acted through passion or prejudice or from some improper motive. There is nothing in this case whatever to show that the board was not endeavoring to do what it believed to be for the best interests of all the people of the subdistrict. The vote in the board stood four in favor of removal and one opposed.

We cannot discover that there are any reasonable grounds for reversing its action. We are not called upon to decide whether it acted wisely or unwisely but simply and solely whether there is sufficient evidence to warrant the county superintendent in reversing its action on the grounds of abuse of discretion. We regret very much that we are obliged to reverse the action of the county superintendent, and do not doubt that he acted according to his best judgment. We are, however, compelled to decide that the board did not in any way so abuse its discretion as to warrant an interference. REVERSED.

HENRY SABIN,

February 8, 1896. *Superintendent of Public Instruction.*

J. H. WINGET v. INDEPENDENT DISTRICT OF WELDON.

Appeal from Decatur County.

APPEAL. Will not lie from neglect or failure to act. There must be a recorded action in the matter complained of.

This appeal was taken from the neglect of the board of Weldon to act as asked for upon petition signed by J. H. Winget and others.

This department has always held that an appeal will not lie from the neglect or failure of a board to act upon a petition. The proper remedy in such a case is not appeal, but an application to a court for a writ to compel the board to take some action.

The case is dismissed for want of jurisdiction. REVERSED AND DISMISSED.

HENRY SABIN,

March 3, 1896. *Superintendent of Public Instruction.*

HUGH MCMILLAN v. DISTRICT TOWNSHIP OF WAVELAND.

Appeal from Pottawattamie County.

BOARD OF DIRECTORS. It is the first duty of a board to co-operate with and assist the teacher in the conduct of the school.

TEACHER. A teacher may justly claim and expect to receive, the assistance and advice of the board, and especially the help of his own subdirector, in the proper conduct of his school.

BOARD OF DIRECTORS. In exercising its power in a semi-judicial capacity, the board should be able to show the very best reasons for its conclusions.

TEACHER. It is alike due to the dignity of the board and the rights of the teacher that no one should be discharged except after thorough investigation and the clearest proof. If possible, the teacher should be shielded from the stigma of discharge.

After a trial, conducted in accordance with law, the board, by a vote of three to two in a board of nine members, discharged the teacher for incompetency, in accordance with the provisions of section 1734. Hugh McMillan appealed to the

county superintendent, who reversed the order of the board. John W. Rush, president of the board, appeals here.

The proceedings of the board in this case were entirely regular, and it is not claimed that the law was violated by it in any particular, as to its manner of proceeding. The question to be determined by us is, was the county superintendent warranted in finding that the board abused its discretion to that extent to require a reversal of its action in discharging the teacher.

The testimony discloses a very undesirable condition in the school in question, as to the matter of discipline and the behavior of the scholars. The testimony discloses the fact that many of the older scholars, instead of being an assistance to the teacher, and a credit to themselves and their parents, were insubordinate, disobedient, and disrespectful to the teacher. The testimony also discloses that the subdirector, instead of assisting the teacher in maintaining discipline and good order in the school, withheld that support so much needed by any teacher under such circumstances. It is not shown nor is it claimed that any of the board had visited the school for the purpose of aiding the teacher in enforcing rules for its government, as it is required to do by the first part of section 1734. Nor did the subdirector visit his school, as he is required to do by the latter part of section 1756.

The testimony in the case is to the effect that after the incorrigible scholars were dismissed the teacher was much more successful in his work. We cannot find from the testimony that the teacher failed in any important particular to attempt to do his full duty by his school, and to regard equally the rights of every scholar. Under all circumstances, we think it is the first duty of any board to co-operate with and assist the teacher in the conduct of his school. This is the duty of the local subdirector in a peculiar sense, as he is in close relation to his own school and his teacher. A teacher may justly claim and expect to receive, the assistance and advice of the board, and especially the help of his own subdirector, in the proper conduct of his school. See case on page 135, S. L. Dec. 1892. It is often the case that a little timely assistance, offered at the right time and in the proper spirit, will aid a teacher very materially in maintaining good order and discipline in his school, and in preventing many difficulties from arising, which might under a different course, almost certainly tend to injure the efficiency of the school.

In this case, two of the five members present at the trial voted to discharge the teacher, two voted in the negative, leaving the casting vote with the subdirector of the school, who, as we have seen, was out of sympathy with the teacher, and had failed to afford his assistance to a successful management of the school. While it is true that in general the discretionary acts of a board are entitled to great weight, yet it is also true that in exercising its power in a semi-judicial capacity, the board should be able to show the very best reasons for its conclusions. Except upon the clearest proof, and the most convincing reasons apparent to the board that the good of the school demands the discharge of the teacher, a teacher should be shielded from the stigma of discharge, and the authority of the board and the respect due the board and its teachers, should be maintained, by a decision on the part of the board to assist and support the teacher in bringing his school to a conclusion as nearly as possible satisfactory to the board and creditable to himself. The decision of the county superintendent is AFFIRMED.

HENRY SABIN,

May 20, 1896. *Superintendent of Public Instruction.*

S. B. HEATH v. DISTRICT TOWNSHIP OF IOWA.

Appeal from Wright County.

COUNTY SUPERINTENDENT. On appeal may do no more than the board might have done.

INDEPENDENT DISTRICT. The boundaries outside the town plat depending upon the petition of the electors, such boundaries may not be fixed until petitioned for.

This is a case arising under the amendment to section 1800 made by the twenty-fifth general assembly. It is the effect of this amendment that when a town or village has less than two hundred inhabitants and not less than one hundred inhabitants, the territory contiguous to such town plat may not be included in the proposed independent town district except on a written petition of a majority of the electors residing upon such territory outside the town plat.

In this case the board refused to fix the boundaries of a contemplated independent town district. From its order appeal was taken to the county superintendent who reversed the order of the board and fixed the boundaries of a contemplated independent district, but different from the boundaries asked for in the petition presented to the board from the electors residing outside the town.

Without considering any of the other merits of the case it becomes necessary to inquire whether the county superintendent might in reversing the order of the board, fix different boundaries than those petitioned for by the majority of the electors residing upon the outside territory. We find that the territory included in the contemplated district by the order of the county superintendent excludes at least four and one-half sections that were before included. Did the county superintendent have power to fix different boundaries for the outside territory from those petitioned for when application was made to the board, without first himself having a written petition from a majority of the resident electors upon the territory outside the town which said county superintendent included within the contemplated independent district? We think he did not. If our view is correct it is decisive of the case and we will be compelled to reverse the county superintendent's decision.

Not many cases have arisen under the amendment to section 1800, found in chapter 38, Laws of 1894. But it seems to us that there can be no doubt as to the intention of the general assembly to require that before territory outside a town or village of over one hundred and of less than two hundred inhabitants may be included within a contemplated independent town district, a majority of the electors must consent that such boundaries may be fixed. Any other conclusion would seem to defeat the purposes of the amendment. It is not reasonable to urge that the county superintendent would have greater power on appeal than the board would have.

It will be noticed that this decision has no reference whatever to the merits of the case as to the boundaries which should be fixed for a town independent district. That matter is still within the discretion of the board under the limitations of the law.

REVERSED.

HENRY SABIN,

August 3, 1896. *Superintendent of Public Instruction.*

J. E. KLEIN v. INDEPENDENT DISTRICT OF OSKALOOSA.

Appeal from Mahaska County.

BONDS. If a large portion of the people desire to vote upon issuing bonds, the board should submit such a proposition.

CERTIORARI. The best remedy of any one believing that the law has been violated, is application to a court for relief.

On the 22d day of June, 1896, the directors of the above named district unanimously adopted the following resolution:

Resolved, That the question of issuing bonds of this district in an amount not exceeding $30,000, for the purpose of constructing a public school building, shall be submitted to the voters of this district on Thursday, July 2, 1896, at the court house. The polls to be open from 9 A. M. to 7 P. M., of said day.

The usual notices were posted by the secretary in five places, as required by section 1742. The notices specified the date and place of the election, the hours during which the polls should be open and the manner of voting. It provided that those voting on this proposition should have written or printed in their ballots: "For the issue of bonds—Against the issue of bonds." That the preliminary proceedings of the board were strictly in accordance with the requirements of the law is not questioned by any one.

On the 2d of July, pursuant to the notice, an election was held in the supervisors' room at the court house, the usual place of holding the school meeting of the district. The records show that the polls were opened at 9 A. M. and closed at 7 P. M. The returns were canvassed at the close and showed that there were 1,443 votes, out of which 900 were for issuing bonds and 543 against the same. The returns were signed by three judges, members of the board, and by two clerks, one of whom was the secretary of the board.

In the meantime several citizens assembled about 9 A. M. of the same day in the court room of the same building and organized a meeting by choosing Mr. McMillen president and Lew Shangle as secretary, the president and secretary of the board not being present. The proposition to issue $30,000 in bonds for the purpose set forth in the notice was defeated by a rising vote. The president and secretary were instructed to furnish a copy of the proceedings of the meeting to the officers of the board of directors. The meeting then adjourned *sine die* at 9:45 A. M. The transcript shows that this meeting was in session less than forty-five minutes, and that some of the voters participating in its proceedings voted at the meeting held in the supervisors' room.

All the points that are concerned in the case may very readily be condensed into two statements:

1. It is alleged that the board exceeded its jurisdiction in calling a special election of the voters to vote on the question of issuing bonds, as no schoolhouse has been destroyed and there is plenty of room in buildings now erected to accommodate all the pupils attending the schools. See section 1807½.

We are compelled to hold that the questions thus raised are not in this case. Section 1807½ was evidently intended as supplement to section 1807, and provides a way by which a building destroyed by fire or otherwise may be replaced at the earliest possible moment. We do not believe that the law will bear the construction which the counsel would have us place upon it, that the special meeting mentioned in section 1822 can only be called under the circumstances set forth in section 1807½.

The matter of school accommodations is left to the judgment of the board of directors. The law supposes that these men are elected because of their intelligence and fitness for the position, and that while they will carefully see to it that the schools under their care do not suffer for anything necessary to the progress or comfort of the school, they will not impose an unnecessary burden upon the taxpayers of the district. The board cannot, however, levy a tax for schoolhouse purposes or issue bonds to erect buildings, unless the voters of the independent district have first voted a schoolhouse tax or have by an affirmative vote directed that bonds shall be issued. Section 1822 is evidently intended to provide a way by which the directors may submit to the people of the independent district at any time the question of issuing bonds for the purpose of providing suitable school accommodations for the school district. To put any other construction upon this section or to admit that an action under it is subject to be arrested by the long and tedious process of appeal is to wrest from the board the power, by a legal method, to consult the voters upon matters intimately connected with the welfare of their dearest interests.

We regard the construction to be placed upon section 1822 of the gravest importance. In June, 1894, we submitted to Hon. John Y. Stone, then attorney-general of the state, the following question.

"Is it entirely optional with a board whether it will submit the question of issuing bonds? That is, if very many of the electors desire to have the question of issuing bonds voted upon, and the board fails to call a special meeting of the electors for that purpose, have the electors any remedy?"

We quote his answer:

"In regard to your question, I will say that I am inclined to think that the matter of submitting to the electors of the district a proposition to issue bonds is not entirely optional with the board of directors, although the question is one of great nicety and difficulty. The words of section 1822 in regard to the submission of such a question are that 'the directors of any independent district may submit to the voters of their district at the annual or a special meeting, the question of issuing bonds as contemplated by the preceding section,' etc. In matters where the public or an individual has an interest where a statute is by its terms permissive, the courts have often held that it is mandatory. The supreme court of the United States, in the case of *Supervisors v. United States*, 4 Wall, 446, says: 'The conclusion to be deducted from the authorities is that where power is given to public officers, in the language of the act before us, or in equivalent language, whenever the public interest or individual rights call for its exercise the language used, though permissive in form, is in fact peremptory.' In the case you mention the remedy of the people of the district would be by action of mandamus, and I am inclined to think that in a case where it would clearly appear to the court that the interests of the people of the district demanded that such a proposition be submitted and that a large proportion of the people of the district demanded its submission, the board could be compelled to take the action provided for in section 1822.

"This conclusion is the best I have been able to come to after giving the question careful consideration. The question is a very doubtful one and very difficult to reach a satisfactory conclusion upon."

It will be seen from the above that this is a very difficult question to determine. We have given this matter careful thought and consideration, and following the line of thought in the above opinion, we cannot reach any other conclusion than that if there is any remedy for such an action by the board as is contemplated in section 1822 it must be found in the courts of law and not in appeal to the county superintendent.

2. The county superintendent indicates in her decision that she has some doubts as to her jurisdiction, but determines to hear the case upon the supposition that it comes under the "matter of law or fact," section 1829, S. L. 1892. The counsel for the appellant also urges this point very strongly.

It must be evident to any one that while every appeal must be based upon an alleged grievance relating to some matter of law or fact, it does not necessarily follow that every matter of law or fact can be reviewed by the county superintendent. Section 1836 provides that the county superintendent cannot render a judgment for money. This has for years been construed to mean that no appeal will lie when the validity of a contract, or a money consideration in any other form, is involved.

The supreme court has held in several cases that the right or title to office will be determined only by information in the nature of a quo warranto as provided by sections 3345-3352, code. See 17 Iowa, 525, and 22 Iowa, 75.

In this case, if it was believed that the board acted in violation of law in calling the meeting to vote the bonds, or afterward in proceeding in accordance with the vote, the remedy of any one so aggrieved was certiorari. This would be the manner of proceeding necessary to have the illegal order of the board set aside. See 55 Iowa, 215.

In 1880 Hon. C. W. von Coelln, then superintendent of public instruction, in the preface to the school law decisions, instructs county superintendents as follows: "Since section 1835, code, makes the decision of this department final, and since

sections 3345-3352 provide for a writ in the nature of a quo warranto to determine the right or title to office or the right of a corporation to exist, county superintendents should refuse to entertain any appeal which is prosecuted to determine either of these points."

In matters pertaining to the validity of district organization, this department has always held that the county superintendent has no jurisdiction, and in this we are upheld by the decisions of the supreme court. See 34 Iowa, 306, and 29 Iowa, 264.

These points are very fully argued in the case of *David Ockerman v. District Township of Hamilton*, page 56, S. L. Dec. 1876, and in the case of *N. T. Bowen v. District Township of Lafayette*, page 124, S. L. Dec. 1876 We can see no good reason for departing from this long line of precedents, which have been uniformly followed by this department for many years.

Following the same line of reasoning as in the case quoted above, and which has been acquiesced in by each of our predecessors in turn, we come to the conclusion that in the case at bar the county superintendent did not have jurisdiction. She should have dismissed the case. We come to this decision the more reluctantly because we know that she endeavored to do her duty fearlessly and honestly.

The legality of this election involves the validity of the bonds voted at that time, a question too weighty to be attacked by indirect or collateral proceedings. It may be said here that our county superintendents, while fitted for their especial work, are not supposed to be learned in the law, or at home in determining legal questions.

If we were to hold that in hearing appeals any and every grievance in law or fact could be reviewed by county superintendents, we should burden them with a vast amount of labor not hitherto belonging to the office, and to that extent impair their usefulness. Such labor would be unproductive, as most cases, even then, would find their way to the courts for ultimate settlement. The law provides a better and more satisfactory way by which such cases can be determined.

REVERSED AND DISMISSED.

HENRY SABIN,

October 3, 1896. *Superintendent of Public Instruction.*

CHARLES AND ANNA HELMS v. INDEPENDENT DISTRICT OF MADRID.

Appeal from Boone County.

BOARD OF DIRECTORS. To warrant reversing a discretionary act, the evidence must be conclusive that the large discretion of the board has been abused.

RESIDENCE. The board may adopt any course it sees fit, and make a decision from any fair and impartial method of obtaining information bearing upon the question of residence.

SCHOOL PRIVILEGES. The board has authority to determine when and upon what terms non-residents may attend school.

The affidavit in this case sets forth that the appellants are aggrieved in that they are deprived of school privileges in the independent district of Madrid, by vote of the board, except upon the payment of tuition. It is agreed that they are the minor children of parents who reside outside the limits of said independent district. The case turns entirely upon the actual residence of said Charles and Anna Helms. This was the question which the board had before it for determination.

The attorney-general has decided that the board may adopt any course it sees fit and make a decision from any fair and impartial method of obtaining information bearing upon the point at issue, provided it acts in good faith with a view of getting the exact truth and of making its decision according to the very right of the matter.

In the case at bar the board acted with great deliberation. There is no evidence that it was prejudiced, or actuated by wrong motives. Neither did it in any way violate the law. It is evidently honest in its decision that the appellants are sojourning in the district temporarily for school purposes only, their actual residence being elsewhere.

The board is presumed to be acquainted with all the facts in the case. We can find no reason which would have justified the county superintendent in disturbing its action. The decision of the county superintendent is AFFIRMED.

HENRY SABIN,

December 24, 1896. *Superintendent of Public Instruction.*

LETHA JACKSON v. INDEPENDENT DISTRICT OF STEAMBOAT ROCK.

Appeal from Hardin County.

TEACHER. Full opportunity must be afforded the teacher to make defense against charges.

BOARD OF DIRECTORS. Is required by the law to visit the school and to aid and sustain the teacher in maintaining order and discipline.

TEACHER. Should not employ unsuitable and unusual methods of punishment.

On the 28th day of November, 1896, the board voted to discharge from its employ, Miss Letha Jackson, the teacher in the intermediate room of its school. The reason, as spread upon the record, is that she inflicted inhuman and cruel punishment upon her pupils, especially upon Minnie Platts. An appeal was taken to the county superintendent who reversed the order of the board. Appeal was then taken to the superintendent of public instruction.

There is no doubt from the testimony sent up with the transcript that Minnie Platts was insolent and disobedient, and also that the teacher failed to control herself, and that they engaged in an unseemly squabble in the presence of the school. It is also evident that the teacher was accustomed to use methods of punishment which are, at the best, not customary in well disciplined schools. Much of the testimony is conflicting, and that part of it relating to matters which occurred under a previous contract cannot be allowed to have any weight in determining this case.

The contract, as placed in evidence, specifies that the teacher shall not make use of any cruel or unusual punishment in the discipline of the school. Whether she violated the contract in this respect is a matter to be determined by the board, and in doing so it may avail itself of any sources of reliable information within its power. The notice sent to the teacher, November 23, 1896, charges as follows, "for inhuman and unjustifiable punishment of pupils by pinching, pulling their ears, pulling their hair, and pounding their heads and faces with your fists, and pounding their heads on the wall, floor, and seats of the schoolroom with your fists." November 28 she was notified by the secretary that she was dismissed from the school. At a meeting of the board held November 27, the president appointed the entire board an investigating committee. It appears that it carried on its investigation by questioning the pupils in Miss Jackson's room, and that its vote to dismiss her was based entirely upon information obtained in this way, as appears in the records of November 27. This method placed the teacher at an immense disadvantage. It would at least have been just to have examined these pupils in her presence, and that she should have been allowed to correct their misstatements, if any, and to give the investigating committee her own account of the matter. We cannot consider this an impartial method of conducting an investigation against a teacher. Justice would seem to demand that she should have been furnished a copy of the findings of this committee, and should have been given a reasonable time in which to prepare her defense. The

board places on file the unanimous report of this investigating committee recommending that the teacher be discharged. It, in effect, finds her guilty and asks her to show cause why sentence should not be pronounced.

Now, as to Miss Jackson's failure to appear before the board. Her physician sent a certificate to be read at the first meeting, stating that she was not able to attend on account of sickness. At the same meeting her attorney, Mr. Albrook, in a letter, asks that the board appoint Monday afternoon as a time for hearing the case. It appears to have been a reasonable request and should have been granted in justice to all parties. That Miss Jackson sent her statement denying the charges and averring that she, by her conduct, had given the board no occasion to investigate, furnishes an additional reason and a very strong one why she should have been given the opportunity to be heard by counsel of her own choosing. We do not think that the board intended by an early adjournment to shut her counsel out Saturday night, but it ought to have shown an anxiety to have him present if possible, in order that it might ascertain the very right and justice of all parties in the case. Miss Jackson could very justly plead that her presence would avail nothing after the board had before it a report signed by every member of that tribunal, saying that she ought to be dismissed from her school. The board seems also to have forgotten that the law makes it its duty to visit the school and to aid and sustain the teacher in her efforts to maintain order and discipline. It has duties on the side of the teacher as well as on that of the pupils or the community at large.

We do not wish to be understood as upholding a teacher in the methods of punishment which appear in this case. To pull the hair or the ears of pupils, or so strike them with the fists, are relics of another age of school government, and cannot be justified to-day. We only reach the conclusion that the teacher did not have that fair and impartial trial before the board that is contemplated in the law. Therefore the decision of the county superintendent is AFFIRMED.

HENRY SABIN,

April 7, 1897. *Superintendent of Public Instruction.*

R. ODENDAHL ET AL. v. DISTRICT TOWNSHIP OF GRANT.

Appeal from Carroll County.

APPEAL. Will not lie from joint action of boards making settlement of assets and liabilities.

COUNTY SUPERINTENDENT. Should dismiss an appeal as soon as it becomes certain that the leading issue may be heard and decided only by a court of law.

JURISDICTION. It is very undesirable to bring matters involving a money consideration before the county superintendent on appeal.

Certain territory in the civil township of Grant and part of the independent district of Carroll was restored to the district township of Grant. A settlement of assets and liabilities between the two districts necessarily followed. Robert Odendahl and others were aggrieved with the conclusions reached by the two boards, and took an appeal to the county superintendent, who reviewed the questions presented to him, finding in effect as to the time when the territory did actually become a part of the district township of Grant, as to the disposition of taxes during a period when the control of such territory was in controversy, and also whether the agreement entered into by the boards should be changed by him.

The first question we are required to consider is whether the county superintendent had jurisdiction to hear the case. If we find that he did not have jurisdiction, it will of course be impossible for us to review the questions he determined, and we shall be compelled to dismiss the case for want of jurisdiction.

It has been the uniform opinion of this department that appeal will not lie from the joint action of boards in making the settlement of assets and liabilities required

by section 1715, but that the only remedy, if the law affords relief, would be an action in court to protect the rights of the persons complaining. In order that the matter might be more authoritatively determined, so that this case may be a guide to school officers, we submitted an inquiry to the attorney-general, and quote briefly from his reply:

"Your favor came duly to hand, requesting my opinion upon the following question:

When two boards have made a division of assets and liabilities, under section 1715 of the code, will a person claiming the settlement to be inequitable and insufficient as to the amount agreed upon have the right to appeal to the county superintendent from such agreement; that is, from such joint action of the boards taken as provided in section 1715, will an appeal lie?

"The section in question provides that the respective boards shall make an equitable division of the then existing assets and liabilities between the old and the new districts; it also provides that in case of the failure to agree the matter may be decided by arbitrators chosen by the parties in interest. It has been held by our supreme court that under this section the boards of directors become a special tribunal for the determination of the respective rights of the parties. And it is held that this tribunal thus constituted has exclusive jurisdiction. The action of the special tribunal, consisting of the several boards of directors, is not the action or order of a board of directors, but an order of a special court for the determination of the rights of the several new districts with reference to the assets and liabilities of the old district of which they formed a part. The statute does not give an appeal from such tribunal. My conclusion is that a right of appeal does not exist and a person claiming the settlement to be inequitable has no right of appeal to the county superintendent."

The opinion of the attorney-general is decisive of this case. We think there are many added reasons why questions of this kind should not be heard on appeal before the county superintendent. That officer should not be compelled to review matters involving the jurisdiction over territory, the disposition of taxes, or the right and justice of a finding of boards upon a settlement of assets and liabilities. But these a court may very properly do, as its jurisdiction for such purposes is not questioned, and the precedents for the control of the courts over this class of cases are well established. It is very undesirable to attempt to bring matters involving a money consideration before the county superintendent on appeal. As soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed. In this case it was the duty of the boards interested to make a proper settlement. If fraud or other irregularity was urged, perhaps a court would afford relief to a complainant, but an appeal to the county superintendent would not become a remedy.

We are compelled to remand this case to the county superintendent with instructions to dismiss the case for lack of jurisdiction. DISMISSED.

HENRY SABIN,

June 16, 1897. *Superintendent of Public Instruction.*

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